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ALEXANDER L. STEVAS,

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES R. PRESLEY,
Petitioner,

v.

GEOPHYSICAL SERVICE, INC.
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

RUSSELL H. MCMAINS
Texas State Bar I.D.
No. 13782000
935 Petroleum Tower
P. O. Drawer 480
Corpus Christi, Texas 78403
512/883-0971

Attorney for Petitioner,
James R. Presley

Of Counsel:

EDWARDS, MCMAINS & CONSTANT
Corpus Christi, Texas

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

QUESTIONS PRESENTED

I.

Whether the Oceanographic Research Vessels Act [ORVA], 46 U.S.C.A. §§ 441-45 may properly be construed to altogether deny James R. Presley his otherwise available maritime negligence cause of action against his employer under the Jones Act, 46 U.S.C.A. § 688?

II.

Whether the Oceanographic Research Vessels Act [ORVA], 46 U.S.C.A. §§ 441-45 applies to a vessel which has not been certified as an "Oceanographic Research Vessel" as expressly required by the statute?

LIST OF PARTIES*

Pursuant to Rule 21.1(6) of the Rules of the United States Supreme Court, the following listed parties have an interest in the outcome of this case. Only the first three listed parties actually appeared before the United States Court of Appeals for the Fifth Circuit.

1. James R. Presley, Plaintiff/Petitioner
2. Geophysical Service, Inc., Defendant/Respondent
3. Edwards, McMains & Constant, Attorneys for Petitioner
4. M/V Carribean Seal, Non-Appealing Defendant Vessel
5. Sealcraft Operators, Inc., Non-Appealing Defendant Vessel-Operator
6. Caribe Company, Non-Appealing Defendant Vessel-Owner

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* Appendix B, *infra*, contains a certificate of "interested" persons filed by the Amicus Curiae, International Association of Geophysical Contractors. However, none of these members of the Association are actual parties to the case, except as listed above. See Appendix B, *infra*, at B-1 to B-8.

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OPINIONS BELOW

1. The Opinion of the Court of Appeals, rendered on July 14, 1983, is not yet reported, but will be reported in ____F.2d____ (5th Cir. 1983). The Unofficial Opinion, styled James R. Presley v. The Vessel Carribean Seal, etc., et al. and docketed as No. 82-2305 is printed in Appendix A, *infra*, at pp. A-1 to A-6.

2. The initial Opinion by the United States District Court for the Southern District of Texas, Galveston Division, is officially published as *James R. Presley v. M/V Carribean Seal, et al.*, 537 F. Supp. 956 (S.D. Tex. 1982) and is printed in Appedix A, *infra*, at pp. A-7 to A-27.

3. The subsequent Order and Judgment by the United States District Court for the Southern District of Texas, Galveston Division modified the Court's initial Judgment and certified the Denial of Geophysical Service Inc.'s Motion for Summary Judgment as to Presley's Jones Act claim for interlocutory appeal and is printed in Appendix A, *infra*, at pp. A-28 to A-31.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals for the Fifth Circuit was rendered on July 14, 1983 and the Opinion is printed in Appendix A, *infra*, at pp. A-1 to A-6. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254(1). The Opinion was filed on July 14, 1983 and the issuance of mandate has been stayed until September 12, 1983. No Motion for Rehearing was filed.

FEDERAL STATUTES INVOLVED

46 U.S.C.A. § 688 [Jones Act]:

§ 688. Recovery for injury to or death of seaman

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the

death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

Mar. 4, 1915, c. 153, § 20, 38 Stat. 1185; June 5, 1920, c. 250, § 33, 41 Stat. 1007.

46 U.S.C.A. §§ 441-45 [Oceanographic Research Vessels]:

§ 441. Exemptions of oceanographic research vessels from inspection laws; definitions

As used in sections 441-445 of this title—

(1) the term "oceanographic research vessel" means a vessel which the Secretary of the department in which the Coast Guard is operating finds is being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research;

(2) the term "scientific personnel" means persons who are aboard a vessel solely for the purpose of engaging in scientific research, instructing, or receiving instruction, in oceanography or limnology.

Pub. L. 89-99, § 1, July 30, 1965, 79 Stat. 424.

§ 442. Vessel not considered passenger vessel

An oceanographic research vessel shall not be considered a passenger vessel, a vessel carrying passen-

gers, or a passenger-carrying vessel under the provisions of the laws relating to the inspection and manning of merchant vessels by reason of the carriage of scientific personnel. Pub. L. 89-99, § 2, July 30, 1965, 79 Stat. 424.

§ 443. Vessel not engaged in trade or commerce

An oceanographic research vessel shall not be deemed to be engaged in trade or commerce. Pub. L. 89-99, § 3, July 30, 1965, 79 Stat. 424.

§ 444. Scientific personnel not considered seamen

Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto. Pub. L. 89-99, § 4, July 30, 1965, 79 Stat. 404.

§ 445. Exemption by regulation

If the Secretary of the department in which the Coast Guard is operating determines that the application to any oceanographic research vessel of any provision of title 52 or title 53 of the Revised Statutes, or Acts amendatory thereof or supplementary thereto, is not necessary in the performance of the mission of the vessel, he may by regulation exempt any such vessel from such provision, upon such terms and conditions as he may specify. Pub. L. 89-99, § 5, July 30, 1965, 79 Stat. 424.

28 U.S.C.A. § 1254:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * *.

STATEMENT OF THE CASE

Petitioner, James R. Presley [hereinafter referred to as "Presley"], brought suit in the United States District Court for the Southern District of Texas, Galveston Division in Admiralty, pursuant to 28 U.S.C.A. § 1333 and Fed. R. Civ. P. 9(h), as a result of severe personal injuries which he sustained on March 13, 1980, while serving on board the vessel M/V CARRIBEAN SEAL and employed as a compressor mechanic trainee by Geophysical Service Inc. [hereinafter referred to as "GSI"], the time charterer of the vessel. Presley asserted his causes of action under the Jones Act, 46 U.S.C. § 688, and the general maritime law, including unseaworthiness and maintenance.

GSI moved the District Court for summary judgment to dismiss the claims against it for negligence under the Jones Act, and for maintenance and unseaworthiness under the General Maritime Law, claiming that the Oceanographic Research Vessels Act, 46 U.S.C.A. §§ 441 *et seq.* [hereinafter referred to as the ORVA] had withdrawn Presley's seamen's remedies because he was employed as a member of the seismic crew aboard a vessel engaged in oceanographic research. It was undisputed that the vessel, M/V CARRIBEAN SEAL was never certified as an Oceanographic Research Vessel under the ORVA.

On April 26, 1982, the District Court issued its Memorandum and Order denying GSI's motion in all respects. [Appendix A, *infra*, at A-7]. GSI moved the District Court for a reconsideration, and for certification of the order for interlocutory appeal pursuant to 28 U.S.C.A. § 1292(b). On June 10, 1982, the Court amended its original Order, dismissed Presley's unseaworthiness claim

(since GSI was merely the time charterer of the M/V CARRIBEAN SEAL), and also entered its Certification for Interlocutory Appeal which was accepted and docketed by the United States Court of Appeals for the Fifth Circuit pursuant to Fed. R. App. P. 5.

The Fifth Circuit affirmed the District Court's denial of summary judgment to GSI as to Presley's general maritime claim for maintenance and cure, but reversed the District Court's allowance of Presley's Jones Act claim and rendered summary judgment in favor of the employer, GSI, on that issue. [Appendix A, *infra*, pp. A-1 to A-6].

Specifically, the Fifth Circuit Court of Appeals has held that the ORVA implicitly amended the Jones Act by totally withdrawing seaman's status from the "scientific personnel" on board any vessel engaged in Oceanographic Research, regardless of whether such vessel is certified as an Oceanographic Research Vessel as required by the ORVA. It is from this holding and judgment that Presley Petitions this Court for Writ of Certiorari.

REASONS FOR GRANTING CERTIORARI

Presley is cognizant of United States Supreme Court Rule 17.1 relating to this Court's exercise of discretionary writ of certiorari jurisdiction and respectfully submits that Rule 17.1(c) directly applies to the questions herein presented.

The Opinion by the United States Court of Appeals for the Fifth Circuit is the first appellate decision construing the ORVA in relation to the Jones Act, 46 U.S.C.A. § 688. The Fifth Circuit has held that the United States Congress has *implicitly* withdrawn the protection of the Jones Act from a substantial class of per-

sons who serve on vessels without substituting any remedy whatsoever in its place. The lower court achieved that construction without any support in the legislative history, and actually ignored the pertinent legislative history.

This Court only last term rejected an effort to restrict maritime remedies in the interpretation of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, 33 U.S.C.A. § 901 et seq. In *Director, Etc. v. Perini North River Associates,* ____U.S.____, 103 S.Ct. 634 (1983) this Court held at 647:

> ". . . We are unable to find any congressional intent to withdraw coverage of the LHWCA from those workers injured on navigable waters in the course of their employment, and who would have been covered by the Act before 1972. As we have long held, 'This Act must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results.' Voris v. Eikel, 346 U.S. 328, 333, 74 S.Ct. 88, 91, 98 L.Ed. 5 (1953). See also Baltimore & Philadelphia Steamboat Co. v. Norton, 284 U.S. 408, 414, 52 S.Ct. 187, 189, 76 L.Ed.2d 366 (1932); Northeast Marine Terminal Co., supra, 432 U.S. at 268, 97 S.Ct., at 2359."

The instant case is no less significant in impact as illustrated by the hundreds of employers who claim ORVA insulation from their negligence as represented in Appendix B, *infra,* at B-1 to B-8. Thus, the scope of the issue presented by Presley is extremely significant, particularly since *Perini* continues to recognize the Constitutional impediment to the States providing even worker's compensation benefits to such workers.

Even when Congress enacted the Outer Continental Shelf Lands Act, 43 U.S.C.A. § 1333 et seq., extensive

consideration was given to affording oil platform workers a workable remedy in addition to Longshoremen's and Harbor Workers' Compensation protection. In contrast, James Presley is as plainly exposed to the perils of the sea as the traditional mariner. Yet the Fifth Circuit has immunized the employer from any negligence liability whatsoever.

It is also noteworthy that when Congress recently decided to specifically withdraw the Jones Act remedy from non-citizen and non-resident alien oil workers who are injured abroad, Congress carefully preserved a remedy if one is otherwise unavailable to such persons, either in the country of injury or their home country. 46 U.S.C.A. § 688(b) (1983 Supp).

Clearly, Congress would not totally withdraw a remedy from persons such as Presley, *sub silentio*. Yet the Fifth Circuit has held precisely that.

GSI's Motion for Summary Judgment was predicated on the claim that 46 U.S.C.A. § 444 excluded scientific personnel on an oceanographic research vessel from being considered seamen "under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto." The ORVA specifically defines an ocenographic research vessel in 46 U.S.C.A. § 441(1) as:

> "A vessel which the secretary of the department in which the coast guard is operating finds is being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine

> geophysical or geological surveys, atmospheric research, and biological research . . ."

It is undisputed that the vessel upon which James Presley was serving was not classified, certified, designated or otherwise found by any governmental authority to be "an oceanographic research vessel" as expressly required by the ORVA. Thus the Fifth Circuit has liberally construed ORVA coverage to encompass the broadest possible denial of seamen's remedies.

Indeed, even without resort to the congressional herings, an analysis of the ORVA, in its entirety, compels the conclusion that Congress intended no adverse effect on seamen's remedies by the enactment of this legislation. The Fifth Circuit's decision is largely predicated on the consideration of one section of the Act in isolation. That section of the ORVA is § 444 and provides:

> "Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of Title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto."

From that section alone the Fifth Circuit concluded that the Congress intended to provide that scientific personnel on board oceanographic research vessels were not seamen for any purpose. Clearly, the Congress did not so provide.

It is instructive that in the very next section [§ 445] of the ORVA the Congress provided that:

> "If the secretary of the department in which the coast guard is operating determines that the application to any oceanographic research vessel of

> *any provision of title 52 or title 53 of the Revised Statutes, or Acts amendatory thereof or supplementary thereto,* is not necessary in the performance of the mission of the vessel, he may by regulation exempt any such vessel from such provision, upon such terms and conditions as he may specify." 46 U.S.C.A. § 445 (Supp. 1982). [Emphasis supplied]

It is a cardinal rule of statutory construction that a phrase used in one portion of the statute is accorded the same meaning when that phrase is repeated in the statute. *United States v. Cooper Corporation,* 312 U.S. 600 (1941). Thus, GSI implicitly argues that the Secretary of the Department in which the Coast Guard is operating is vested with authority under the ORVA to exempt *by regulation* certain specified vessels from the operation of the Jones Act. Such a conclusion is absurd on its face and merely amplifies the patent invalidity of the Fifth Circuit's statutory interpretation. At the very least, such absurdity requires the very investigation of the legislative history and purpose of the statute which the Fifth Circuit ignored.

ARGUMENT AND AUTHORITIES

I. BY ITS TERMS, THE ORVA DOES NOT EVEN APPLY TO VESSELS WHICH HAVE NOT BEEN CERTIFIED AS OCEANOGRAPHIC RESEARCH VESSELS.

The Fifth Circuit apparently considered an examination of the ORVA legislative history to be inappropriate by concluding that the terminology utilized in the isolated ORVA section relied upon by GSI was not susceptible to any but the argued construction. Under such a literal analysis

of the statute, GSI was patently disentitled to claim the benefits of the statute in the first instance. Even assuming that James Presley, as a compressor mechanic, is a member of the "scientific personnel", such personnel are excluded only when performing operations on "oceanographic research vessels" which have to be determined to be such by the Secretary of the Department in which the Coast Guard is operating. It is absolutely undisputed that no such determination has ever been made or requested in this case.

The over-literal statutory analysis applied by the Fifth Circuit renders its conclusion untenable.

While the Fifth Circuit principally relied upon the District Court's opinion in *Sennett v. Shell Oil Co.*, 325 F.Supp. 1 (E.D. La. 1971) as authority for applying the ORVA to vessels which are functionally performing oceanographic research without regard to certification, such authority itself plainly recognizes the necessity of resort to legislative history which the Fifth Circuit so carefully averted.

Moreover, the district court in *Sennett*, ignored the significance of the required certification of oceanographic research vessels to determining the intent and purpose of the statute as a whole when construing the section which defines scientific personnel as non-seamen "under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto." The required certification coupled with the provisions in 46 U.S.C.A. § 445 authorizing specific exemption by the Coast Guard by regulation of the application of those same statutory provisions illustrate that the congressional concern related exclusively to the administrative promul-

gation and enforcement of regulations which might not be suitable to oceanographic research vessels. Otherwise, the ORVA represents a delegation by the Congress of authority to the Executive Branch to exempt vessels from the application of the Jones Act on a case by case basis. Presley submits that such a construction is patently absurd.

II. EVEN ASSUMING THE APPLICABILITY OF THE ORVA TO AN UNCERTIFIED VESSEL, THE ACT CANNOT BE PROPERLY CONSTRUED TO DEPRIVE JAMES PRESLEY OF HIS REMEDIES UNDER THE JONES ACT.

Apart from this case, the only published opinion construing the ORVA's effect on the Jones Act is *Sennett v. Shell Oil Co.*, 325 F.Supp. 1 (E.D. La. 1971). Presley submits that the District Court properly disagreed with the conclusion in *Sennett* as to the availability of a Jones Act remedy and properly concluded that *Sennett* was wrongly decided.

Even *Sennett* recognizes at 325 F.Supp. 6 that:

> "The O.R.V. Law does not in terms remove scientific personnel from seaman's status under either general maritime law or the Jones Act. It provides merely that they are not considered seamen under Title 53 of the Revised Statutes 'an Act (sic) amendatory thereof or supplementary thereto.' Clearly, this neither states nor implies that O.R.V. scientific personnel are not seamen for any purpose. Hence, they retain seaman's status under general maritime law."

While the Court in *Sennett* briefly examined the legislative history that was contained in the 1965 U.S.C.C. & A.N. pp. 2383-90, the Court rested its holding as to the unavailability of a Jones Act remedy solely on the

conclusion that the Jones Act was "an Act amendatory or supplementary" to title 53 of the Revised Statutes. Presley contends that this conclusion is wholly erroneous.

A. The Fifth Circuit Erred In Holding That The Jones Act Was "Amendatory" Or "Supplementary" To Title 53.

The District Court opinion in this case ably reviews the history of the Jones Act. [Appendix A, *infra*, at A-7 to A-27]. The Jones Act represented a congressional response to the Supreme Court's decision in *The Osceola*, 189 U.S. 159 (1903), wherein the Court held that a seaman had no maritime cause of action for negligence against his employer. In 1915, Congress passed an omnibus statute which included in § 20 a provision that removed the application of the fellow servant doctrine in maritime cases on the mistaken assumption that this was the sole obstacle to a seaman's maintenance of a negligence action against his employer. Act of March 4, 1915, Ch. 153, 38 Stat. 1164. Every section of that Act of 1915 purports to amend an existing portion of title 53 of the Revised Statutes except § 20. There is absolutely no reference or amendatory language in § 20 which could ever justify a conclusion that § 20 was an amendment to any existing provision of title 53. That is precisely why the West Publishing Editors did not include 46 U.S.C.A. § 688 in the annotative reference to Title 53 which follows the ORVA U.S.C.A. citation. 46 U.S.C.A. § 441 *et seq.*

After the Supreme Court educated the Congress on the deficiencies of their enactment in *Chelentis v. Luchenbach S.S. Co.*, 247 U.S. 372 (1918), Congress enacted an amendment to the prior § 20 which has now become known as the Jones Act and is codified at 46 U.S.C.A.

§ 688. Act of June 5, 1920, Ch. 250, 41 Stat. 988. Section 33 of the Act of 1920 (the Jones Act) like its predecessor, did not amend or purport to amend any provision of title 53 of the Revised Statutes. While the *Sennett* court *and* the Fifth Circuit referred to § 31 of the 1920 Act [46 U.S.C.A. § 597] as a part of the Jones Act which amended title 53, the District Court properly observed that the Jones Act is a totally separate and discrete provision of the 1920 Act, unrelated to § 31.

Ultimately, the District Court properly relied upon this Court's opinion in *Warner v. Goltra,* 293 U.S. 155 (1934) to conclude that title 53 does not, in any manner, restrict or control the application of the Jones Act which is a separate and distinct enactment.

The context in which the issue was presented in *Warner* involved the applicability of the Jones Act remedy for masters of vessels when title 53 defined seamen in such a manner as to exclude masters as being considered seamen. This Court initially noted at 293 U.S. 156:

> "Our concern is to define the meaning for the purpose of a particular statute which must be read in the light of the mischief to be corrected and the end to be attained."

In rejecting the argued non-coverage otherwise compelled by the application of the seaman definition contained in title 53 the Court observed at 293 U.S. 159:

> "We stick too closely to the letter if we say that Congress had the will to give damages for wounds or death to the crew at large or their dependents and to leave the master and his dependents out. An ancient evil was to be uprooted and uprooted al-

> together. It was not to be left with fibers still clinging to the soil."

The Supreme Court further observed that the contiguous placement of the statutes in subsequent codification as authorized by act of Congress and promulgated in 1925, worked no change in the law and certainly could not limit the unrelated Jones Act by the provisions of title 53 to which it had no reference.

The sole remaining contention of GSI and the Fifth Circuit is a question of whether the Jones Act could be considered supplementary to title 53. As has already been indicated, the legislative history of the Jones Act reveals that it was totally separate and distinct from the provisions of title 53 as there had never been any prior provisions or legislative proscriptions in connection with seaman's remedies against their employers.

B. Considering The ORVA As A Whole, The Manifest Purpose Of The Act, And The Legislative History, The ORVA Was Never Intended To Affect Seamen's Remedies Under The Jones Act.

The Fifth Circuit's refusal to analyze the ORVA legislative history is inexcusable. In *Harrison v. Northern Trust Co.*, 317 U.S. 476 (1943) this Court noted at 479:

> "In so doing the court below refused to examine the legislative history of § 807 on the ground that the section was unambiguous.
>
> But words are inexact tools at best and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how

'clear the words may appear on superficial examination.' [citing cases]."

The fundamental principles of statutory construction were articulated in *United States v. American Trucking Assn's*, 310 U.S. 534 (1940) at 543-44:

> "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. *A few words of general connotation appearing in the text of statutes should not be given a wide meaning contrary to a settled policy, 'excepting as a different purpose is plainly shown.'* " [Emphasis supplied]

This Court's precedent merely establishes that the principal objective in construing legislation is to effectuate the true intent of the legislative body. As the Chief Justice recently penned in *Stafford v. Briggs*, 444 U.S. 527 at 536:

> "Our analysis does not stop with the language of the statute; we must also look to 'the objects and policy of the law.' Brown v. Duchesne, 19 How., at 194, 15 Lawyer's Ed. 595. In order to 'give [the Act] such a construction as will carry into execution the will of the Legislature . . . according to its true intent and meaning,' ibid., we turn to the legislative history [citing cases]."

The ORVA was enacted as public law 89-99 at 79 Stat. 424 (1965) with the title as follows:

> "An Act to exempt oceanographic research vessels from the application of certain vessel inspection laws, and for other purposes."

The bill that was ultimately enacted into law was Senate Bill 627. The final favorable committee report from the Senate Committee on Commerce noted in Senate Report No. 168 [Appendix C *infra*, at C-1 to C-4] that the purpose of the bill was as follows:

> "The purpose of this proposed legislation is to encourage and facilitate oceanographic research and to remove several restrictions which have hampered the expansion of research in the marine sciences. This will be accomplished by exempting oceanographic research vessels from the application of certain vessel inspection laws."

The Senate Report further reflects that a virtually identical bill had been favorably acted upon by the Senate in the prior Congressional session but was not reported out of the House Committee in time for enactment in 1964. Senate Report, Appendix 2.

The text of the original bill that was introduced in the Senate and the House as well as the bill that was pre-

viously acted upon favorably by the Senate only applied the oceanographic research vessel's exemption to vessels which were operating in the public interest. A review of the testimony and materials contained in the hearings in the House [Appendix C *infra*, at C-5 to C-14] reveals that the public interest portion of the statute as originally proposed was deleted to make the oceanographic research vessel exemption obtainable by private industrial concerns. At no time during the course of any of the Legislative hearings is there any indication or implication that a seaman's remedies under the Jones Act or the general maritime law would be affected by passage of the bill.

Indeed the Senate report by Senator Magnuson (Appendix 2) concludes with a paragraph under the heading "Changes in Existing Law." That paragraph provides:

> "Enactment of the Bill would create an exemption, under certain circumstances, from provisions of existing law, but its enactment would not specifically amend any provision of existing law."

Moreover, the universally declared purpose of all those who submitted material or testified before the House Committee in its hearing was to authorize the Coast Guard to grant exemptions to oceanographic research vessels in order to relieve them from unnecessary or burdensome regulations relating to vessel inspection as well as some of the other regulatory statutes. As reflected by the House Hearings, general counsel of the Department of Commerce, Robert E. Giles, stated:

> "This Bill would permit the imposition of regulations designed to meet the specific needs of those vessels and thus eliminate restrictions and requirements

> which are presently hampering the national oceanogranphic program." House Hearings p. 2.

Assistant Secretary of the Navy, Research & Development, Robert W. Morris, wrote to the Committee:

> "The purpose of the bill is to encourage and facilitate oceanographic research by exempting vessels used for oceanographic research from the applicability of certain vessel inspection laws." House Hearings p. 2.

The Secretary of the Interior, Stewart Udall, explained the bill's function at p. 4 of the House Hearings:

> "The bill also authorizes the coast guard to revise the vessel inspection, manning, and other associated requirements related to cargo and miscellaneous vessels to meet the particular characteristics of vessels used in oceanographic research."

The General Counsel of the Treasury, Fred Smith, stated to the Committee:

> "The department supports the purpose of the proposed legislation which is to encourage and facilitate oceanographic research, and has had this problem under study for some time in conjunction with Research Vessel Operators' Council. The bill would remove several restrictions which have hampered the expansion of research in the marine sciences." House Hearings p. 5.

Indeed, the majority of the actual testimony before the House Committee was from Comdr. William M. Benkert, of the U. S. Coast Guard, Assistant Chief, Merchant Vessel Inspection Division. Appendix C, *infra* at

C-5 to C-14. That testimony is particularly pertinent as noted by the Ninth Circuit in *United States v. Blue Water Marine Industries, Inc.*, 661 F.2d 793 (9th Cir. 1981) wherein the Court observed at 795:

> "The interpretation of the manning statutes and of ORVA by the coast guard as the agency charged with administering and enforcing those statutes, is entitled to deference in matters of statutory construction."

In explaining the purpose of the removal of scientific personnel from seaman status as a part of the ORVA, Comdr. Benkert observed at p. 12 of the House Hearings:

> "Further, the elimination of scientific personnel from seaman status will remove them from statute applicability involving obtainment of merchant mariner's document and other related requirements which were not initially contemplated for this type of personnel."

Further, at p. 13 of the House Hearings, Comdr. Benkert is asked:

> "Mr. Casey. Will this bill cover all the statutory provisions that we *are trying to give them exemptions from or not in title 52 or title 53? Does that cover all these inspection laws or not?*
>
> Commander Benkert. Yes, sir.
>
> Mr. Casey. It does.
>
> Commander Benkert. Yes, sir.
>
> Mr. Casey. In other words, it covers those that you have just been relating.

Commander Benkert. Yes, sir. Our feeling is that the passage of this law would *in effect not change any existing statutes but by permitting the Secretary of the Treasury—*

Mr. Casey. *It would permit a waiver.*

Commander Benkert. *It would in effect permit a waiver under section 4 of the bill.*

Mr. Casey. *On any type of vessel of any size that would require certification now this bill would give the Secretary the opportunity to say, this is an oceanographic vessel, and they do not have to comply with this or this.*

Commander Benkert. *Basically that, Mr. Chairman; yes, sir.* [Emphasis supplied].

Thus, Comdr. Benkert fully supports Presley's interpretation of the ORVA as dealing exclusively with the right of the Coast Guard (who was responsible for the implementation of the regulations in question) to authorize exemptions from certain established regulations and to specifically promulgate new regulations that are tailored to the needs of oceanographic research vessels.

All of the witnesses who testified or offered material before the House and Senate emphasized that safety was a prime concern and that nothing in this bill would adversely impact marine safety in any manner. Presley submits that the construction which the Courts have always afforded the application of the Jones Act to protect seamen and their dependents in the event of bodily injury or death plainly advances the interest of marine safety which is consistent with those identical concerns expressed before the Congress during the ORVA hearings. In contrast, Presley submits that the deprivation of those remedies

would clearly be adverse to the marine safety interests which pervade the legislative history of the ORVA.

As already indicated, the initial bill proposed before Congress was confined to vessels which were operating in the public interest and were considered by Comdr. Benkert to be limited to non-commercial oceanographic research vessel operators. Though the public interest portion of the bill was later amended in the Senate version to embrace all oceanographic research vessels operating exclusively in that area and so certified by the administrative authority, the section that classifies scientific personnel aboard such designated vessels as non-seamen was never changed. Thus, the broad consequence of the non-seaman section of the ORVA, as argued by GSI and adopted by the Fifth Circuit, is patenly illogical since, as initially proposed, the legislation would not even have applied to private operators. Thus, the Fifth Circuit has implicitly held that the initially proposed legislation was intended to insulate only non-commercial operators from the application of the Jones Act. There is absolutely no basis for the imputation of such a patently discriminatory statutory classification to the Congress.

Whether the ORVA be literally or strictly construed in accordance with its terms, or construed in terms of the statute as a whole, and its manifest purpose and legislative history, the ORVA represents no impediment whatsoever to James Presley's right to maintain his action under the Jones Act and the Fifth Circuit decision to the contrary should be reversed.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, Petitioner, James R. Presley, respectfully prays that this Petition for Certiorari be granted and that upon hearing hereof that the Fifth Circuit opinion and judgment summarily denying Presley's Jones Act claim should be reversed and the cause ordered remanded to the District Court for trial, and that he be awarded his costs of appeal and such other and further relief as the Court feels that he has shown himself justly entitled to under the circumstances.

Respectfully submitted,

By: _____

RUSSELL H. MCMAINS
Texas State Bar I.D.
No. 13782000
935 Petroleum Tower
P. O. Drawer 480
Corpus Christi, Texas 78403
512/883-0971

Attorney for Petitioner,
James R. Presley

Of Counsel:

EDWARDS, MCMAINS & CONSTANT
Corpus Christi, Texas

CERTIFICATE OF SERVICE

On this _____ day of September, 1983, three (3) true and correct copies of the above and foregoing instrument were forwarded via U.S. Certified Mail, Return Receipt Requested, to:

Mr. Robert J. Cunningham
Vinson & Elkins
First City Tower
Houston, Texas 77002

Mr. Mark L. Ross
Lemle, Kelleher, Kohlmeyer & Matthews
Pan American Life Center
601 Poydras Street, Suite 2100
New Orleans, Louisiana 70130

_____

RUSSELL H. MCMAINS

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APPENDIX A

James R. PRESLEY, Plaintiff-Appellee,

v.

The VESSEL CARRIBEAN SEAL, etc., et al.,
Defendants,

Geophysical Service, Inc.,
Defendant-Appellant.

No. 82-2305.

United States Court of Appeals,
Fifth Circuit.

July 14, 1983.

Appeal from the United States District Court for the Southern District of Texas.

Before, INGRAHAM, WILLIAMS and HIGGINBOTHAN, Circuit Judges.

INGRAHAM, Circuit Judge:

This case involves the preclusive effect of the Oceanographic Research Vessels Act, 46 U.S.C. §§ 441-445 (ORVA) on remedies of scientific personnel under the Jones Act, 46 U.S.C. § 688, and general maritime law. James Presley was a compressor mechanic aboard the CARRIBEAN SEAL when he suffered personal injuries. In response to Presley's suit, Geophysical Services, Inc. (GSI) moved for summary judgment on the grounds that the ORVA excluded scientific personnel from general maritime law and Jones Act recovery and that since GSI

was a time charterer of the vessel, it could not be liable for the vessel's unseaworthiness. After reconsidering the motion, the district court granted partial summary judgment for GSI on the unseaworthiness claim, but denied the motion in all other respects. The district court certified the interlocutory order. Concluding that the Jones Act is amendatory of or supplementary to title 53 and therefore that coverage under the Jones Act is precluded by the ORVA, we reverse that portion of the district court's order and remand the case for further proceedings.

James Presley was hired by GSI as a compressor mechanic and was assigned to the CARRIBEAN SEAL, an oceanographic research vessel that conducted seismic measurements. While applying a dressing to the compressor's belt, Presley got his arm entangled in the machinery and was injured. He brought an action under the Jones Act and the general maritime law against his employer GSI, the CARRIBEAN SEAL, and her owners, Caribe Co. and Sealcraft Operators, Inc., for the injuries allegedly sustained in the course and scope of his employment aboard the vessel. GSI moved for summary judgment on the ground that Presley's claims were barred by the ORVA because he was part of the scientific personnel aboard an oceanographic vessel. The district court denied the motion, but after reconsideration granted partial summary judgment on the unseaworthiness claim. After the interlocutory order was certified, we granted leave to file this appeal to decide whether the ORVA prevents scientific personnel from recovering under the Jones Act or general maritime law.

The resolution of this case depends upon the scope given the terms of the ORVA. Presley was a member of

the scientific personnel aboard an oceanographic research vessel as those terms are defined by the Act. *See* 46 U.S.C. § 441 (defining "oceanographic research vessel" and "scientific personnel"). The dispute arises, however, with the effect to be given section 444, which reads: "Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act [sic] amendatory thereof or supplementary thereto." 46 U.S.C. § 444. Although the statute does not expressly remove scientific personnel from seaman status under either the Jones Act or the general maritime law, it states that they shall not be considered seamen under the provisions of title 53 and its amendatory and supplementary acts.

[1, 2] We begin by noting that the general maritime law was not replaced by title 53 and its amendatory and supplementary acts, but remains available to seamen independent of their statutory remedies. *See, e.g., Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 549, 80 S.Ct. 926, 932, 4 L.Ed.2d 941 (1960) (owner's duty to provide a seaworthy vessel is absolute and independent of the Jones Act duty to exercise reasonable care). Appellants contend, however, that Congress intended to exclude scientific personnel not only from the statutory regulations, but also from statutory and maritime remedies affecting seamen by creating a new classification of individuals aboard vessels. Accordingly, appellant argues that Congress' reference to title 53, which contains an expansive definition of seamen, *see* 46 U.S.C. § 713, was intended to exclude scientific personnel from the broadest coverage of seamen. This argument is unpersuasive. If Congress had intended such a result, it could have prevented scientific personnel from being considered seamen under the provisions of the

general maritime law in addition to title 53. *See, e.g.*, 46 U.S.C. § 446 ("Sailing school students . . . shall not be considereed seamen under the provisions of titles 52 and 53 of the Revised Statutes of the United States and any Act amendatory thereof or supplementary thereto, or for the purposes of the maritime law doctrines of maintenance and cure or warranty of seaworthiness."). The district court therefore correctly concluded that the ORVA did not prevent scientific personnel from being considered seamen under general maritime law.

With respect to the effect of the ORVA on the Jones Act, the district court concluded that Congress intended to exempt scientific personnel from the regulations affecting seamen that may impede or hinder oceanographic research, but not to exclude them from the remedies afforded seamen. Since the statute states that scientific personnel shall not be considered seamen under the provisions of title 53 or its amendatory and supplementary acts, the inquiry is whether the Jones Act is such an amendatory or suplementary act. The district court determined that it was not. The court's reliance upon *Warner v. Goltra*, 293 U.S. 155, 55 S.Ct. 46, 79 L.Ed. 254 (1934), is misplaced. *Warner* displays the inherent interpretational problem created by Congress' attempt to provide special remedies for a particular group of mariners, which are referred to as "seamen," within a general statutory scheme that protects all waterborne workers, which are also referred to as "seamen." Thus, the issue in *Warner* was whether the judicial interpretation of seamen under 46 U.S.C. § 713 prevented masters from recovering as seamen under the Jones Act. Reasoning that the dual enactment of the Jones Act and the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 903, evidenced Congress' intent to in-

clude masters within Jones Act coverage, the Court refused to apply the section 713 definitional interpretation to every merchant seaman provision. *Warner*, 293 U.S. at 159-60, 55 S.Ct. at 48. Consequently, *Warner* does not stand for the proposition that the Jones Act neither amends nor supplements title 53; rather, the nature of the issue reveals that the Court was determining whether the definition developed for the general statutory scheme was applicable to a specific provision that supplemented the protection afforded a particular group of mariners.

[3] We are persuaded by Judge Rubin's analysis in *Sennett v. Shell Oil Co.*, 325 F.Supp. 1 (E.D. La. 1971), that the Jones Act either amends or supplements title 53.[1] Since the Jones Act is codified under and pertains to the protection and relief provisions given merchant seamen[2] and since at least one part of the Jones Act amended a provision of title 53,[3] "[i]t is plain both from its specific provisions and its overall purpose that the Jones Act amends or supplements Title 53." *Sennett*, 325 F.Supp. at 6. Accordingly, the district court erred in determining that the ORVA did not prevent scientific personnel from being considered seamen under the provisions of the Jones Act.

---

1. Title 53 of the Revised Statutes was comprised of sections 4501 to 4612 of the Revised Statutes and is now contained in sections 542a, 543, 545, 546, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 660, 661 to 669, 674 to 679, 682 to 685, 701 to 703, 705 to 707, 709, 710 and 711 to 713 to title 46, concerning shipping. These sections appear in ch. 18 entitled "Merchant Seamen."

2. 46 U.S.C. § 688 appears in ch. 18 under the heading "Protection and Relief."

3. 46 U.S.C. § 597 (previously codified as Title 53 of the Revised Statutes, section 4530 and amended by the Jones Act, ch. 250, § 31, 41 Stat. 1006 (1920)).

The portion of the district court's order denying summary judgment with respect to the general maritime law is AFFIRMED, the portion denying sumary judgment with respect to the Jones Act is REVERSED, and the case is REMANDED for further proceedings consistent herewith.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CIVIL ACTION No. G-81-56

JAMES R. PRESLEY,
Plaintiff

v.

The vessel CARRIBEAN SEAL, etc., *in rem*, and
CARIBE COMPANY, SEAL FLEET, INC.,
GEOPHYSICAL SERVICE, INC., and
SEALCRAFT OPERATORS, INC.,
Defendants

William R. Edwards, Edwards & Perry,
Corpus Christi, Texas, for plaintiff

Eugene J. Silva, Vinson & Elkins,
Houston, Texas, for defendants

MEMORANDUM AND ORDER

The plaintiff, James R. Presley, commenced this action under the Jones Act, 46 U.S.C. § 688, and general maritime law against his employer, Geophysical Service, Inc., the M/V CARRIBEAN SEAL, and her owners, Caribe Company and Sealcraft Operators, Inc., for injuries allegedly sustained in the course and scope of his employment on board the vessel. Geophysical Service, Inc., has

moved for summary judgment, asserting that the plaintiff's claims against it under the Jones Act and general maritime law are precluded by the Oceanographic Research Vessels Act (ORVA), 46 U.S.C. § 441 *et seq.*

In issue here is section 4 of the ORVA, 46 U.S.C. § 444, which provides that scientific personnel on oceanographic research vessels shall not be considered seamen under the provisions of Title 53 of the Revised Statutes and acts amendatory or supplementary thereto. While the Act does not expressly encompass the Jones Act or general maritime law, defendant argues that its language and legislative history evidence congressional intent to exclude scientific personnel from the class of persons entitled, under the Jones Act and general maritime law, to maintain an action for damages for personal injury brought about by the negligence of the employer or the unseaworthiness of a vessl.[1] Plaintiff, to the contrary, argues from the legislative history of the Act that Congress could not have intended such a result. The Court agrees.

I. *The ORVA: Background and Legislative History*

In enacting the Oceanographic Research Vessels Act in 1965, Congress recognized that oceanographic research vessels, and personnel aboard them engaged in specialized scientific work in the marine sciences, required differing treatment under regulatory and safety laws than did other vessels and their personnel engaged in the usual pursuits of commercial passenger and cargo carrying. H.R. Rep. No. 599, 89 Cong., 1st Sess., *reprinted in* [1965] U.S.

1. A general maritime seaman also has a right to maintenance and cure and may bring an action for its recovery. *See generally* G. Gilmore & C. Black, The Law of Admiralty §§ 6-6 to 6-13 (2d ed. 1975). If section 4 of the ORVA denies plaintiff seaman status under general maritime law, this remedy of course is foreclosed to him.

Code Cong. & Ad. News, 2382, 2384. *See* S. Rep. No. 1276, 88 Cong. 2d Sess. 1. The objective of the legislation was to exempt research vessels from the strict inspection and personnel protection laws mandated for commercial crews which hindered the mission of technical or scientific personnel. *South Corp. v. United States*, 531 F.Supp. 180, 185 (Ct. of Internat'l Trade 1982).

The classification of scientific personnel under existing laws and regulations administered by the United States Coast Guard[2] was a major legislative concern. H.R. Rep. No. 599, *supra;* Oceanographic Research Vessels Exemption: Hearings before the Subcommittee on Oceanography of the Committee on Merchant Marine and Fisheries on H.R. 3419 and H.R. 7320, 89 Cong., 1st Sess. 1 (May 4-5, 1965). Research vessels were generally subject to statutory provisions as passenger or cargo vessels, depending on the number and type of personnel carried. In either case, the vessels and their personnel were subject to certain laws relating to vessel inspection, manning, and licensing. For these purposes, the complement of scientific personnel on board the vessels were required to be designated either as passengers or crew members.

Unless scientific personnel were designated as "crew members" or "seamen," the vessels as a practical matter were limited in the number of such personnel that might be carried in order to remain within the statutory category of "cargo or miscellaneous" vessels rather than "passenger" vessels, which were subject to more rigorous regulation

2. The bulk of these regulations have been promulgated pursuant to Title 53 and amending or supplemental legislation and concern certification of seamen, the signing of shipping articles, vessel accommodations, seamen's wages, manning and watch requirements, etc. *See generally* 46 U.S.C. § 541 *et seq;* 46 C.F.R. §§ 12.01 *et seq.* & 14.01 *et seq.* (1981).

than cargo vessels. Classifying scientific or technical personnel as seamen, however, subjected them to statutes involving attainment of merchant mariner's documents and other regulations ill-suited to their function. Oceanographic Research Vessels Hearings, *supra*, at 11-12 (statement of Commander Benkert, U.S. Coast Guard) & 49 (position paper of the Research Vessel Operator's Council).[3]

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3. The position paper of the Research Vessel Operator's Council, a chief proponent of the legislation, outlined its specific concerns with the classification of scientific personnel:

> These three areas have been of concern to the members of the RVOC: (a) Manning and licensing of personnel; (b) inspection of vessels; asd (c) identification of the vessels. They are discussed briefly below.
>
> (a) Manning and licensing
>
> As a practical matter the personnel carried onboard research vessels fit into two categories: the operating crew and the scientific personnel. The operating crew consists of the deck, engine, and stewards departments. Scientific personnel consist of the scientists, technicians, and students engaged in the primary mission of the vessel and whose presence is the sole purpose for the vessel's operations.
>
> 1. *Operating crew*—On inspected research vessels the operating crewmembers are identified by the possession of a merchant mariner's document which sets forth the holder's personal description and, by endorsement, certifies the particular skilled positions in which he is qualified to serve.
>
> 2. *Scientific personnel*—Under existing law the Coast Guard may issue merchant mariner's documents (MMD) to scientists who are citizens of the United States. Such issuance is a time-consuming and costly process, normally requiring upward of 30 days from date of application therefor. In obtaining MMD's the only ratings for which scientific personnel are able to apply are the unqualified entry ratings of ordinary seaman, wipe, or messman. The priopriety of thus identifying scientific personnel is questionable, especially with the fluxuating numbers involved.
>
> 3. *General*—Fruitful discussions on these matters have taken place with the Coast Guard and where authority exists, the problems are being satisfactorily resolved.
>
> The subject bill will enable resolutions of problems regarding the status of the vessels and of the scientific crew onboard.

Oceanographic Research Vessels Hearing, *supra*, at 49.

The ORVA sought to clarify the status of scientific personnel to permit oceanographic research vessels to operate unimpeded by artificial limitations as to the number of scientific personnel carried or the requirements of laws pertaining to seamen that were not geared to the duties of onboard scientists. After defining the terms "oceanographic research vessel" and "scientific personnel" in section 1 of the Act,[4] Congress in section 2 excluded oceanographic research vessels from the category of passenger vessels under the provisions of the laws relating to the inspection and manning of merchant vessels, thereby insuring that scientific personnel on board would not be considered passengers.[5]

Congress, however, did not exempt oceanographic research vessels from the laws applicable to "merchant" or "cargo and miscellaneous" vessels. *United States v. Blue*

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4. 46 U.S.C. § 441. That section provides:
As used in sections 441-445 of this title—
(1) the term "oceanographic research vessel" means a vessel which the Secretary of the department in which the Coast Guard is operating finds is being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research;
(2) the term "scientific personnel" means persons who are aboard a vessel solely for the purpose of engaging in scientific research, instructing, or receiving instruction, in oceanography or limnology.

5. *Id.* § 442. That section provides:
An oceanographic research vessel shall not be considered a passenger vessel, a vessel carrying passengers, or a passenger-carrying vessel under the provisions of the laws relating to the inspection and manning of merchant vessels by reason of the carriage of scientific personnel.
Under applicable regulations a vessel carrying more than 12 passengers would be classified as a passenger vessel. *See* 46 C.F.R. § 90-05-1 (1981).

Water Marine Industries, Inc., 661 F.2d 793, 794-95 (9th Cir. 1981). *See* Oceanographic Research Vessels Hearings, *supra*, at 15; H.R. Rep. No. 599, *supra* (Departmental Reports—Departments of the Interior and the Navy).[6] Oceanographic research vessels thus remained subject to Titles 52 and 53 of the Revised Statutes, and scientific personnel, "seamen" within the meaning of the statute defining the term in Title 53, *see* 46 U.S.C. § 713,[7] remained subject to the regulations pertaining to seamen.

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6. In section 3 of the Act, 46 U.S.C. § 443, Congress provided: "An oceanographic research vessel shall not be deemed to be engaged in trade or commerce." In *Blue Water Marine*, however, the Ninth Circuit rejected the argument that section 3 excluded research vessels from the category of "merchant" vessels, citing interpretive Coast Guard regulations and observing that such a construction would render the provisions of section 5, 46 U.S.C. § 445, largely surplusage. 661 F.2d at 795. That section empowers the Coast Guard to exempt research vessels from provisions of Titles 52 and 53 determined to be unnecessary to the performance of the vessel.

It should be noted that research vessels are no longer classified as "cargo or miscellaneous" vessels under the regulations, the Coast Guard having promulgated specific provisions pursuant to Title 52 applicable to research vessels. 46 C.F.R. § 188.01 *et seq.* (1981). The vessels remain fully subject to Title 52, however, except as otherwise provided in accordance with 46 U.S.C. § 445. *See* 46 C.F.R. § 188.05-2(a).

The vessels also remain subject to Title 53, which applies to all vessels not specifically exempted by an act of Congress. Act of Dec. 21, 1898, ch. 28, § 26, 30 Stat. 764. Congress has exempted certain special purpose vessels from the provisions of Title 53, fishing vessels being a prominent example. *See id.*

7. Originally enacted as section 4612 of the Revised Statutes. Act of June 7, 1872, ch. 322, § 65, 17 Stat. 277. 46 U.S.C. § 713 provides:

> In the construction of title 53 of the Revised Statutes, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the "master" thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a "seaman"; and the term "vessel" shall be understood to comprehend every description of

Congress adopted section 4 of the Act[8] to ensure that scientific personnel employed upon research vessels would not be considered as seamen or members of a vessel's operating crew for such purposes. That much is clear from the legislative history of the Act, and from the Coast Guard regulations promulgated thereunder. *See* 46 C.F.R. § 188.05-33 (1981).[9] Whether Congress also envisioned the exclusion of scientific personnel from consideration as seamen for purposes of the Jones Act and general maritime law is less clear.[10] Several courts have held that the

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vessel navigating on any sea or channel, lake or river, to which the provision of such title may be applicable, and the term "owner" shall be taken and understood to comprehend all the several persons, if more than one, to whom the vessel shall belong.

8. 46 U.S.C. § 444. That section provides:
Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto.

9. The regulations provide:
(a) Scientific personnel on oceanographic vessels are not considered to be seamen or passengers, but are considered as "persons" when requirements are based on total persons on board.
(b) Scientific personnel on such vessels shall not be required to possess seamen's documents nor shall they be required to sign shipping articles.

10. It is an almost unavoidable conclusion from the legislative history of the act that the primary, if not sole, concern of the bill's sponsors and proponents was the web of Coast Guard regulations applicable to scientific personnel *qua* seamen under Title 53. The House Report voiced concern over the application of vessel inspection, manning, and other safety requirements intended for vessels and personnel engaged in normal commercial operations. H.R. Rep. No. 599, *supra*; [1965] U.S. Code Cong. & Ad. News at 2383. The Research Vessels Operator's Council, which logically would seem to have been the group most concerned with liability under the Jones Act and general maritime law, expressd dissatisfaction only with licensing and manning provisions. Refer to note 3 *supra*. Jonathan Leiby, Chairman of the Council, cited "overly restrictive regulations"

reference in section 4 to acts "amendatory" or "supplementary" to Title 53 must be deemed inclusive of the Jones Act. *Castro v. M/V LAFAYETTE,* No. 76-H-755 (S.D. Tex., March 2, 1978) (unpublished opinion); *Sennett v. Shell Oil Co.,* 325 F.Supp. 1 (E.D. La. 1971). If the Act, however, is to be interpreted in view of "the mischief to be corrected and the end to be attained," *Warner v. Goltra,* 293 U.S. 155, 158 (1934), it is the opinion of this Court, for the reasons stated herein, that a narrower construction of the statute is required.

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as the impetus for legislation. Oceanographic Research Vessels Hearings, *supra,* at 45.

In fact, there is a conspicuous absence in the legislative history of any discussion as to the possible effect of section 4 on the rights of scientific personnel under the Jones Act or general maritime law. Nowhere is there any indication that Congress viewed the treatment of scientific personnel as seamen under these laws as "the mischief to be corrected" by the proposed legislation, despite repeated emphasis in the testimony before the House Subcommittee that such personnel, while not generally part of the operating crew, were vitally concerned with the primary mission of the vessel. *E.g., id.* at 37 (statement of Dr. Leland J. Haworth, Director, National Science Foundation) & 49 (position paper of the Research Vessels Operator's Council). *See also* Sennett v. Shell Oil Co., 325 F.Supp. 1, 4 (E.D. La. 1971). In the course of that testimony, analogies were drawn on several occasions between scientists on research vessels and fishermen on fishing vessels, who because the vessels on which they worked were exempted from Title 53, would not be considered seamen in the construction of that title. *See* 46 U.S.C. § 713.

It can scarcely be countenanced that Congress, in view of the existing law in 1965, was not aware that shipboard personnel who contributed to the primary mission of a vessel would likely be seamen under the Jones Act and general maritime law, *see* Offshore Co. v. Robison, 266 F.2d 769 (5th Cir. 1959), just as fishermen, although denied seaman status under Title 53 by statutory fiat, clearly may retain that status for purposes of the Jones Act and general maritime law. In this light, congressional exclusion of scientific personnel from consideration as seamen "under title 53 of the Revised Statutes and Act amendatory thereof or supplemental thereto" in section 4 of the ORVA does not appear to have been intended to affect their status under the Jones Act or general maritime law.

II. Scientific Personnel, The Jones Act, and General Maritime Law

Although the ORVA has been law for nearly two decades, only a handful of district courts have considered the issue before this Court today. The Court is aware of two cases, both holding that the ORVA precludes scientific personnel from maintaining damage actions under the Jones Act. *Castro v. M/V LAFAYETTE, supra; Sennett v. Shell Oil Co., supra. See also Delahoussey v. Western Geophysical Co. of America,* 476 F.Supp. 54 (S.D. Miss. 1979) (considering effect of ORVA on general maritime law).[11]

The leading case is *Sennett v. Shell Oil Company.* In *Sennett,* Judge Alvin B. Rubin, then a district court judge for the Eastern District of Louisiana, held that the ORVA did not affect the status of scientific personnel as seamen under general maritime law. The court, however, concluded that the reference in section 4 of the Act to "Title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto" was sufficiently broad to encompass the Jones Act and foreclose its remedy to scientific personnel aboard oceanographic research vessels.

After examining the purpose and provisions of the Act, the *Sennett* court concluded that scientific personnel had

11. In Castro v. M/V LAFAYETTE the district court granted the motion of two defendants for summary judgment on a Jones Act claim and a general maritime claim of unseaworthiness, apparently relying upon section 4 of the ORVA as to both claims. The dismissal of the latter claim on that basis conflicts with *Sennett and Delahoussey,* which hold that the ORVA leaves unaffected the status of scientific personnel under general maritime law. The *Castro* court also found, however, that the moving defendants were not the owners of the vessel in question. While the court apparently did not rely on this finding in dismissing the unseaworthiness claim, it seemingly would have been dispositive of the matter. Refer to text at Section III *infra.*

been classified as non-seamen under Title 53 so as to relieve research vessels from the requirements of certain statutory regulations pertaining to seamen that Congress found hampered their oceanographic research mission. The court did not interpret the statute, which neither states nor implies that scientific personnel are not seamen for any purpose, as changing the provisions of general maritime law with respect to either the traditional maritime crew or the scientific personnel on board research vessels. The Act provided only that such personnel would not be considered seamen under Title 53 and amendatory acts. 325 F.Supp. at 4, 6.

The district court also noted that the Jones Act was not enacted as part of Title 53 of the Revised Statutes. However, the court concluded as a matter of statutory construction that the Jones Act was an act "amendatory" to Title 53; therefore, by virtue of section 4 of the ORVA, the congressionally created action for damages at law in favor of a seaman injured by the negligence of his employer was unavailable to scientific personnel:

> It is urged that, because the Jones Act is neither a part of Title 53 nor is expressly mentioned in the O.R.V. Law it should be considered to remain fully applicable to O.R.V.'s. But this conclusion does not necessarily follow.
>
> The Jones Act was never a part of the Revised Statutes because it was adopted after they were compiled. Nor is it expressly referred to in the explanatory notes to the Oceanographic Research Law in U.S.C.A.
>
> However, Title 53 of the Revised Statutes of 1878 bears the heading "Merchant Seamen" and was comprised of Sections 4501 through 4612. All of its ex-

> tant provisions now appear in Title 46 of the United States Code (see Page 73 of the Tables volume of the United States Code Annotated). The Jones Act, which also deals with merchant seamen, is found in this same title (46 U.S.C.A. § 688). At least one part of the Jones Act, Section 31, amended a provision of Title 53 of the Revised Statutes, Section 4530.
>
> It is plain both from its specific provisions and its overall purpose that the Jones Act amends or supplements Title 53 and would have been a part of that Title had it been enacted prior to 1878.

Id. at 6.

There is inherent tension in the *Sennett* opinion. The court clearly found that the ORVA did not in terms remove scientific personnel from seaman status under either general maritime law or the Jones Act. *Id.* The court also found from the legislative history of the Act that Congress had classified scientific personnel as non-seamen to avoid the application to them of "certain statutory regulations pertaining to seamen," and was not intended to provide relief from the general maritime obligations owed to such personnel. *Id.* at 4. Yet the court, after abbreviated consideration of the "specific provisions and overall purpose" of the Jones Act, concluded that it was an act "amendatory" to Title 53. The court also found support for this conclusion in Coast Guard regulations applicable to oceanographic vessels, *id.* at 6, although those regulations, like the Act itself, do not in terms remove scientific personnel from seaman status under general maritime law or the Jones Act.[12]

12. *See* 46 C.F.R. § 188.05-33 (1981). Refer to note 9 and accompanying text *supra*.

The events leading to the enactment of the Jones Act have been amply chronicled. *See, e.g.*, G. Gilmore & C. Black, *supra*, § 6-20. In 1903 the Supreme Court held that a seaman possessed no cause of action against his employer for negligence under the general maritime law. *The OSCEOLA*, 189 U.S. 159, 175 (1903). In 1915 Congress passed an omnibus statute dealing principally with matters such as seamen's wages, working conditions on shipboard, desertion, and lifesaving equipment.[13] Several sections in the 1915 Act amended provisions of Title 53. In section 20, a final and apparently unrelated provision, Congress expressed its dissatisfaction with the rule in *The OSCEOLA* by providing: "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority." Apparently, the congressional draftsmen interpreted the Supreme Court decision as holding that the fellow-servant rule precluded seamen from maintain negligence actions against their employer under the general maritime law.

Shortly, in *Chelentis v. Luchenbach S.S. Co.*, 247 U.S. 372 (1918), the Supreme Court made clear that it was not the fellow-servant doctrine that dispossessed seamen under general maritime law of a negligence cause of action against their employer. Two years later Congress enacted the Merchant Marine Act of 1920.[14] The Act established the Shipping Board, enacted the Ship Mort-

13. Act of Mar. 4, 1915, ch. 153, 38 Stat. 1164.

14. Act of June 5, 1920, ch. 250, 41 Stat. 988. Actually, the Merchant Marine Act, codified at 46 U.S.C. § 861 *et seq.*, was only part of the Act of June 5, 1920, which, like the Act of March 4, 1915, was an omnibus statute.

gage Act, and made important amendments to the Maritime Lien Act of 1910. Sections 31 and 32 amended a provision of Title 53, and a second provision arguably supplemental to Title 53.[15] In section 33 of the 1920 Act, Congress again attempted to overrule *The OSCEOLA* by creating a statutory action for damages at law in favor of a seaman injured in the course of his employment. This provision has come to be known as the Jones Act.

The background of the Jones Act sheds some light on its status as an act amendatory of or supplementary to Title 53 of the Revised Statutes. Neither section 33 of the Act of 1920, nor section 20 of the 1915 Act expressly amend any provision of Title 53. Both acts, however, like the provisions of Title 53, are concerned with the protection of seamen, and in the subsequent compilation of the United States Code found a place alongside the earlier statutes in Title 46, which relates to shipping, and particularly in chapter 18 of that title, which relates to "Merchant Seamen." *See Warner v. Goltra, supra,* at 161; *Sennett, supra,* at 6.

The contiguous placement of the Jones Act and the provisions of Title 53 in a chapter and title of the United States Code relating to merchant seamen apparently prompted the district court in *Sennett* to conclude that "the Jones Act amends or supplements Title 53 and

15. Section 31 amended R.S. § 4530, a provision of Title 53, codified as amended at 46 U.S.C. § 597. Section 32 amended a provision of an 1884 act which appears to be supplemental to the regulatory scheme of Title 53. Act of June 26, 1884, ch. 121, § 10, 23 Stat. 55, codified as amended at 46 U.S.C. § 599. The *Sennett* court inadvertently referred to section 31 of the 1920 Act as one part of the Jones Act which amended Title 53. *See* Sennett, *supra,* at 6. The Jones Act, however, is a separate and discrete provision of the 1920 Act.

would have been part of that title had it been enacted prior to 1878." *Sennett, supra,* at 6. This reasoning, however, is in direct conflict with the Supreme Court decision in *Warner v. Goltra, supra.* This Court finds *Warner* dispositive of the question of the Jones Act's status as an act amendatory or supplementary to Title 53, and therefore must decline to follow Judge Rubin's holding in *Sennett.*

In *Warner* the personal representative of a tugboat master brought suit under the Jones Act. The trial court sustained a demurrer to the complaint on the ground that "master" was not a "seaman" within the meaning of the Jones Act. The Supreme Court of Missouri affirmed the judgment below resting its opinion on 46 U.S.C. § 713, which defines the term "seaman" for the purposes of Title 53.[16]

The United States Supreme Court, in an opinion by Mr. Justice Cardozo, reversed, rejecting the contention that the statutory definition of seaman under Title 53 of the Revised Statutes was applicable to the Jones Act. The Court reasoned:

> [W]ith a few verbal changes § 713 is a reenactment of § 65 of the Act of June 7, 1982 (17 Stat. 277), which was then known as § 4612 of the Revised Statutes. In the compilation of the Code some of the provisions for the protection of seamen contained in the Act of 1872 were placed in Title 46, which related to shipping, and particularly in Chapter 18 of that title, which related to "Merchant Seamen." They had previously been reenacted, as parts of the Revised Statutes, along with § 65. The Acts of 1915 and 1920 were placed in the same chapter and title, and were thus brought into contiguity with the sec-

16. Refer to note 7 *supra.*

> tions carried over from the Act of 1872. Very clearly the change of location did not work a change of meaning. The rule of construction laid down in § 713 must be confined to those sections of the chapter which were contained in the Act of 1872, or in the equivalent provisions of the Revised Statutes, before the Code had rearranged them. The compilers of the Code were not empowered by Congress to amend existing law, and doubtless had no thought of doing so. As to that the command of Congress is too clear to be misread.

293 U.S. at 160-61 (footnotes omitted).

Warner establishes that persons excluded by statutory fiat from consideration as seamen under the provisions of Title 53 nonetheless may retain seaman status under the Jones Act. Further, the Supreme Court, in holding that the contiguous placement of the Jones Act and Title 53 in a chapter of the United States Code relating to merchant seamen does not make the statutory definition of seamen under Title 53 applicable to the Jones Act, considered and rejected the reasoning upon which the district Court's conclusion in *Sennett* in large measure is founded. Accordingly, this Court holds that the Jones Act is not an act amendatory or supplementary to Title 53 of the Revised Statutes within the meaning of section 4 of the ORVA so as to prevent scientific personnel from asserting seaman status in actions against their employer arising under the Jones Act.

The defendant here argues, however, that reference to Title 53 in section 4 of the ORVA was merely Congress' way of incorporating into the Act the expansive statutory definition of "seaman" found in 46 U.S.C. § 713. *Cf. Castro v. M/V LAFAYETTE, supra*, slip op.

at 3 (noting expansive concept of "seamen" in 46 U.S.C. § 713). Citing general references in the legislative history of the Act to section 4 as a provision excluding scientific personnel from "the laws and regulations applicable to "seamen,"[17] the defendant urges that Congress indeed intended to bar scientific personnel from being considered as seamen under the Jones Act and general maritime law.

Conclusory statements in the legislative history of an act, however, must yield to its more specific provisions, just as imaginative interpretations of a statute must yield to its "plain meaning." Section 4 neither states nor implies that scientific personnel are not seamen for any purpose. It provides instead that they are not to be considered seamen under Title 53 of the Revised Statutes and acts amendatory or supplementary thereto. *See Sennett, supra,* at 6. While the definition of "seamen" in 46 U.S.C. § 713 is "directed to extension not to restriction," *Uravic v. F. Jarka Co.,* 282 U.S. 234, 239 (1931), it extends only to "the sections fairly within its range," that is, to Title 53. *Warner v. Goltra, supra,* at 161.

Nor does the legislative history of the ORVA, on balance, support the defendant's contention that scientific personnel may not retain seamen status under the Jones Act and general maritime law. Congress adopted the

17. *See, e.g.,* H.R. Rep. No. 599, *supra;* [1965] U.S. Code Cong. & Ad. News at 2387 (departmental report—U.S. Navy). It might be observed that this language, even when read out of the context of the Act's legislative history, is not particularly illuminating of congressional intent to exclude scientific personnel from seaman status under the Jones Act and general maritime. Viewed in the overall contexxt of the legislative history, it tends to support the opposite conclusion. Refer to notes 2-10 & accompanying text *supra.*

ORVA in 1965 to exempt research vessels from the strict inspection and personnel protection laws mandated for commercial vessels. The legislative history, and particularly the hearings before the House Subcommittee, clearly show that Congress excluded scientific personnel from consideration as seamen under Title 53 to avoid the operation of regulations that were ill-suited to such personnel and unnecessarily hindered them in the performance of their technical or scientific functions. There is no indication, however, that Congress believed the Jones Act standard of care or the general maritime obligation to provide a seaworthy vessel to be so onerous when applied to scientific personnel as to require the exclusion of these persons from the range of the law's humanitarian policy.[18] This is amplified by the absence of congressional provision of a compensation scheme to scientific personnel, and the failure of the Act to state or imply that scientific personnel would have the protection of the statutes of each of the 50 states depending on the happenstance of where each made his contract of employment. *Sennett, supra,* at 4.

In sum, the Court finds that Congress in enacting the ORVA did not intend that scientific personnel, any more than traditional blue water sailors, should be left without a remedy if injured, or that their dependents were to be helpless if the injury resulted in death. *See Warner v. Goltra, supra,* at 162.[19] The Court holds that scien-

18. Seas Shipping Co. v. Sieracki, 328 U.S. 85, 95 (1945).

19. Mr. Justice Cardozo's eloquent conclusion in Warner v. Goltra has some meaning for the instant case as well. In discussing the statutory distinction between masters and ordinary seamen under the provisions of Title 53 relating to the shipment of crews, wages, protection, release, discharge of seamen, and the like, the Court observed:

tific personnel on board oceanographic research vessels, if otherwise entitled to assert seamen status under the Jones Act and general maritime law,[20] are not prevented from doing so by the ORVA, but are entitled to the same remedies available to "all whose duties contribute to the operation and welfare of the vessel." *Offshore Co. v. Robison*, 266 F.2d 769, 775 (5th Cir. 1959).

III. *Geophysical Service's Liability under General Maritime Law*

In the event the plaintiff is found to be a general maritime seaman, defendant contends that it owes no duty to plaintiff either by way of the warranty of seaworthiness or the doctrine of maintenance and cure, and is entitled to summary judgment on these counts.

> [I]n respect of dealings of that order, the maritime law by inveterate tradition has made the ordinary seaman a member of a favored class. He is a "ward of the admiralty," often ignorant and helpless, and so in need of protection against himself as well as others. The master, on the other hand, is able in most instances to drive a bargain for himself, and then when the bargain is made, to stand upon his rights. Discrimination may thus be rational in respect of remedies for wages. *The Bethulia*, 200 Fed. 876; *The Putnick*, 291 Fed. 902. It is neither rational nor just if extended to remedies for bodily wounds. At such times master and seaman are approximately equal.

293 U.S. at 162.

Here, too, with respect to remedies for personal injury or death, scientific personnel and traditional seamen are approximately equal. Nothing could be clearer from the testimony before the House Subcommittee than that members of the scientific party aboard research vessels are exposed to the perils of the sea as a condition of their employment, in exactly the same manner as crewmembers of ships of all types. Oceanographic Research Vessels Hearing, *supra*, at 28 (statement of Stanford T. Crapo, President, Marine Acoustical Services, Inc.).

20. The question of seaman status under the Jones Act and general maritime law ordinarily is one of fact, *see* Offshore Co. v. Robison, 266 F.2d 769, 779 (5th Cir. 1959), and the Court expresses no opinion as to the plaintiff's status under those laws.

Because the implied warranty of seaworthiness arises out of the vessel, maritime law imposes the absolute duty to provide a seaworthy vessel only upon those whose relationship with the vessel is that of owner or operator. *Daniels v. Florida Power & Light Co.*, 317 F.2d 41, 43 (5th Cir. 1963). Defendant urges that it did not stand in that relationship to the vessel in question, but was rather a time charterer. *See Loose v. Offshore Navigation, Inc.*, 670 F.2d 493, 498 (5th Cir. 1982). A purported copy of the time charter between Geophysical Service and Sealcraft Operators, the alleged demise charterer of the vessel, is attached as Exhibit A to the defendant's motion for summary judgment.

It is said that a bareboat or demise charter constitutes the only form of charter that purports to invest temporary powers of ownership in the charterer. *Baker v. Raymond International, Inc.*, 656 F.2d 173, 182 (5th Cir. 1981). To create a demise, the vessel owner must completely and exclusively relinquish "possession, command and navigation" of the vessel to the demisee. *Guzman v. Pichirilo*, 369 U.S. 698, 699 (1962). Conversely, a time charterer is not the owner *pro hac vice* of the vessel, as the vessel owner does not relinquish operation or control of the vessel to the charterer. *See* G. Gilmore & C. Black, *supra*, § 4-14.

Undoubtedly, and as a matter of law, one whose relationship to a vessel is defined solely by the provisions of a time charter is not the warrantor of the vessel's seaworthiness to seamen who work aboard her. Plaintiff apparently challenges the defendant's motion on this point only because the exhibited time charter lacks proper authentication. While there is probably no serious dis-

pute as to the document's authenticity or the effect of its provisions, it is nonetheless not admissible as evidence absent proper authentication or identification. F.R.Evid. 901. Hence, defendant, as a party moving for summary judgment, has not met its evidentiary burden of showing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).[21]

Defendant also maintains, while conceding that it was plaintiff's employer, that it is under no obligation to provide maintenance and cure because it was not the owner of the CARRIBEAN SEAL.[22] Because the question of the defendant's status as an owner *pro hac vice* of the vessel remains unresolved, the motion for summary judgment lacks foundation. The Court does not intimate, however, that the defendant, as plaintiff's employer but not the owner of the vesel on which he served, is not bound under general maritime law to provide maintenance and cure. The law in this and other

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21. Beyond this, the courts in this circuit look through the form of a transaction to its substance to determine whether an agreement for the use of a vessel constitutes a particular form of charter or some other relationship. Agrico Chemical Co. v. M/V BEN W. MARTIN, 664 F.2d 85, 91-92 (5th Cir. 1981). *See* Loose v. Offshore Navigation, Inc., *supra*, at 498 n.8. There is no suggestion here, however, that the substance of the purported transaction is at variance with its form, or that the defendant exercised any form of operation or control over the vessel ordinarily incident to ownership or demise.

22. Relying principally on Judge Brown's statement in Isthmian Lines, Inc. v. Haire, 334 F.2d 521, 523 (5th Cir. 1964), that the right to maintenance and cure arises out of relationship between ship and seaman, and not from the seaman's contract of employment, defendant argues that a seaman's employer who is not a shipowner should not be obligated to provide maintenance and cure. While this conclusion may be a logical extension of Judge Brown's reasoning, it has not been adopted by the Fifth Circuit to date. Refer to note 23 and accompanying text *infra*.

circuits is plainly to the contrary. *See, e.g., Baker v. Raymond International, supra,* at 185; *Caulfield v. AC & D Marine, Inc.,* 633 F.2d 1129, 1131 (5th Cir. 1981), *Mahramas v. American Export Isbrandtsen Lines, Inc.,* 475 F.2d 165, 170-71 (2d Cir. 1973). *See also* G. Gilmore & C. Black, *supra,* § 6-7, at 285-86.[23]

Accordingly, it is ORDERED, ADJUDGED and DECREED that the defendant's motion for summary judgment be and the same is hereby DENIED.

DONE this the 26th day of April, 1982, at Galveston, Texas.

s/s HUGH GIBSON
United States District Judge

23. In *Baker* Judge Rubin held that an *in personam* action for maintenance and cure may be brought only against the seaman's employer, but that an *in rem* action would lie against the vessel. In *Caulfield,* the Court, without discussing the *in rem* or *in personam* aspects of the action, indicated that maintenance and cure may be recovered from either the employer or shipowner. Presumably, an *in personam* action would lie against the shipowner only when he is the seaman's employer, although the availability of the *in rem* action makes this requirement, as a practical matter, meaningless. Whether the right of maintenance and cure arises from the relationship between ship and seaman, as Judge Brown apparently believes, or from the seaman's contract of employment, as Judge Rubin has opined, for present purposes is purely academic. The law in this circuit, at least for now, is quite clear.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CIVIL ACTION No. G-81-56

JAMES R. PRESLEY,
Plaintiff

v.

The Vessel CARRIBEAN SEAL, etc., et al,
Defendants

ORDER

BEFORE THE COURT are the motions of defendant Geophysical Service, Inc. for reconsideration of the Court's Memorandum and Order of April 26, 1982, and for certification of the interlocutory decision pursuant to 28 U.S.C. § 1292(b).

Defendant Geophysical Service urges the Court to reconsider that portion of the Court's Memorandum and Order denying partial summary judgment with respect to the plaintiff's general maritime unseaworthiness claim against it. In support of the motion defendant relies upon the affidavit of William Blakely, which defendant contends properly authenticates the purported time charter attached to its motion for summary judgment. That document, defendant contends, establishes that it is not the owner of the M/V CARRIBEAN SEAL and not a warrantor of her seaworthiness.

The Court, after consideration of the summary judgment proof, is of the opinion that no genuine issue of material fact exists with respect to defendant's status as a time charterer, and that, accordingly, defendant is entitled to judgment as a matter of law as to plaintiff's unseaworthiness claim against it. Therefore, it is

ORDERED, ADJUDGED and DECREED that

(1) the Court's Memorandum and Order of April 26, 1982 be, and the same is hereby AMENDED;

(2) defendant Geophysical Service's motion for summary judgment as to plaintiff's unseaworthiness claim against it is GRANTED and that portion of the plaintiff's complaint is DISMISSED; and

(3) defendant's motion for summary judgment remains in all other respects DENIED.

The defendant also moves the Court for an order pursuant to 28 U.S.C. § 1292(b) certifying the interlocutory decision of April 26, 1982 for appeal and staying the action upon application for appeal. The Court is of the opinion that its Memorandum and Order of April 26, 1982, as amended herein, involves controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. Accordingly, it is further

ORDERED that defendant's motion for certification is GRANTED.

The Court declines to order a stay in proceedings, however, and it is further

ORDERED that defendant's request for such an order under 28 U.S.C. § 1292(b) is DENIED.

The plaintiff has filed a motion for partial summary judgment with respect to defendants Caribe Company and Sealcraft Operators, allegedly the owner and demise charter of the M/V CARRIBEAN SEAL, respectively. Plaintiff contends that no genuine issue of material fact exists with respect to these defendants' alleged relationship to the vessel, that they therefore are charged under general maritime law with the obligation to provide a seaworthy vessel, and are liable to plaintiff for any injury resulting from an unseaworthy condition.

Plaintiff's motion is premature. First, plaintiff has yet to establish as a factual matter that he is a seaman under the general maritime law. Second, plaintiff has not established that the vessel in question was unseaworthy. Unlike the determination underlying Geophysical Service's motion for summary judgment as to plaintiff's unseaworthiness claim, a finding that no genuine issue of fact exists with respect to Caribe and Sealcraft's status as owner or owner *pro hac vice* of the vessel does not enable the Court to grant dispositive relief with respect to any claim of liability asserted by plaintiff against these defendants. Accordingly, it is further

ORDERED that plaintiff's motion for partial summary judgment be, and the same is hereby DENIED.

DONE this the 10th day of June, 1982, at Galveston, Texas.

/s/ HUGH GIBSON
United States District Judge

APPENDIX B

In the United States Court of Appeals for the Fifth Circuit

No. 82-9159

GEOPHYSICAL SERVICE, INC.
Appellant

versus

JAMES R. PRESLEY
Appellee

CERTIFICATE OF INTERESTED PARTIES

NOW COMES petitioner, International Association of Geophysical Contractors, and certifies that the following persons have an interest in the outcome of this motion and appeal. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal, pursuant to Local Rule 13(a).

Aeropulse Exploration Services, Inc.
Alpha Geophysical Inc.
ARMA Geophysical Company
Austin Exploration Inc.
Big Country Geophysical Company
Bradley Exploration Inc.
Brown Exploration Co., Inc.
Buckskin Services, Inc.
Bureau D'Investigation Geotechnique (B.I.G.)
CAASA International Corporation
C.S.R.
Central Exploration Co., Inc.
John E. Chance & Associates, Inc.
Compagnie Generale de Geophysique (C.G.G.)
Cooksley Geophysicals, Inc.

Criterion Exploration, Inc.
CXC, A Division of Berry Industries
CXC International
Daniel Geophysical
Dawson Geophysical Company
Dawson Seismic Surveying
Dee Exploration, Inc.
Diamond Geophysical Inc.
Digicon Geophysical Corp.
Digiseis Exploration, Inc.
Digiseis Exploration Pty./Ltd.
Engineering Specialties, Inc. (ESI)
Exploration Data Consultants, Inc. (EDCON)
Fairfield Industires
Frontier Exploration, Inc.
Gale Resources Inc.
Geomex Surveys Limited
Geophysical Company of Norway A/S (GECO)
Geophysical Field Surveys, Inc. (GFS)
Geophysical Service Inc. (G.S.I.)
Geophysical Systems Corporation (GSC)
GeoQuest International, Inc.
Geoscience Petroleum Services Corp. (GPS)
Geo-Search Corporation
GEO Seismic Services, Inc.
  Northern Operations
GEO Seismic Services, Inc.
  Southern Operations
Geosource Inc. (Petty-Ray Geophysical)
Geotronics Corporation
Golden Geophysical Corporation
Grant Geophysical Corporation
GraviMetrics, Inc.
Gulf Interstate Geophysical, Inc.
Gulf Coast Seismic, Inc.
HR Exploration Company
Hall Geophysical, Inc.
High Resolution, Inc.
Horizon Exploration (Int.) Ltd.

Hunt Exploration, Inc.
Inland Geophysical Company
JDK Incorporated
Kemp Geophysical Company
Kenting Exploration Services, Ltd.
Lockhart Exploration, Inc.
McClelland Engineers, Inc.
M.T.S. Inc.
NCS International Inc.
Nekton, Inc.
Newton Exploration Company, Inc.
NF Industries, Inc.
NORPAC Exploration Services, Inc.
Northern Geophysical of America
Odom Offshore Surveys, Inc.
Offshore Navigation, Inc. (ONI)
Paladin Geophysical Corporation
Petroseis Corporation
PhotoGravity Company
Prairie Eagle Exploration Co.
Prakla-Seismos GmbH
Quest Exploration Inc.
Racal-Decca Survey, Inc.
M. L. Randall Exploration, Inc.
Rocky Mountain Geophysical, Inc.
Rogers Explorations, Inc.
Sefel Geophysical, Ltd.
Seiscom Delta Inc.
Seisdata Services, Inc.
Seismic Experts Group, Inc.
Seismic Explorations International, S.A.
Seismic Petroleum Services
Seismograph Service Corporation (SSC)
Seis Pros Inc.
Seis-Port Explorations, Inc.
Sheehan Exploration Company
Sigma Geoservices, Inc.
Signal Exploration Corporation
Silver State Seismograph Services, Inc.

Sourcex Geophysical Ltd.
Southern Seismic Exploration, Inc.
Southland Seismic, Inc.
Southwest Geophysical Inc.
Southwestern Explosives, Inc.
Spindletop Geophysical Corporation
States Geophysical Corporation
STM Corporation
Sundance Exploration Company
Teledyne Exploration Company
Tidelands Geophysical Co., Inc.
Tomlinson Geophysical, Inc.
Triangle Geophysical Company
United Seismic Acquisitions, Inc.
Velocity Data Pty. Ltd.
Ward Exploration Co., Inc.
Western Geophysical Company of America
Wm. Harvey Seismic Services, Inc.
Automated Research Corp.
Baird Petrophysical Group, Inc.
Casper Processors, Inc.
Chaparal Seismic Co.
Data, Inc.
Denver Processing Center, Inc.
GDI, Incorporated
GeoCenter Exploration, Inc.
GeoQuest Data Services
GTS Corporation
Hosking Geophysical Corporation
Houston Processors, Inc.
Merlin Geophysical Co. Ltd.
Neo-Tech
Oil Data Processing Company
Petrophysics, Inc.
Petroscience Corporation
Seis-Quest, Inc.
Seismic Reflections, Inc.
Seismic & Digital Concepts, Inc.
Strata Search Processing Co.
Southeastern Seismic Data, Inc.

Sytech Corporation
Target Geophysical, Inc.
Wm. Harvey Sales, Inc.
Andrews Exploration Co.
Richard Brewer
Cal Geo, Inc.
DeSanto Exploration Services, Inc.
EG&G International Inc.
Energy Analysts, Inc.
Paul Farren
John J. Fleming, Inc.
GOSH, Inc.
Kary Data, Inc.
G. J. Long & Associates, Inc.
Kindel P. McNeill
Patch Work Enterprises Ltd.
Elwin M. Peacock
P. T. Hanseatic Jaya
Howard Renick, Jr. (INDESCO)
SEACO, Inc.
Sidney Schafer and Associates, Inc.
Tetra Tech, Inc.
Richard Veazey
Acy's Exploration Equipment Rental Co.
Air Services International, Inc.
Airwest Helicopters, Inc.
Aztec Drilling Company
Bertram Drilling, Inc.
Coltex Drilling, Ltd.
Comap Geosurveys, Inc.
Contental Divide Helicopters, Inc.
Evergreen Helicopters, Inc.
Frank's Drilling and Seismic Services
Geodrilco, Inc.
Helicopter Associates, Inc.
Helidrill Incorporated
Hignight Incorporated
Hilyard Drilling Company
Hosking Exploration Helicopters

Jim Johnson Drilling Company Inc.
McGee Drilling Company, Inc.
Miller and Bond Drilling Company, Inc.
N & W Drilling, Inc.
Nash Drilling Co.
Omniflight Helicopters, Inc.
Peters Drilling, Inc.
Quality Assurance Exploration, Inc.
Quality Shot Hole Plugging
R. & B. Drilling Company
R. D. Nash Drilling Co.
R.R.D. Drilling Company
Rocky Mountain Helicopters, Inc.
Seisform Drilling Inc.
Seismic Administrative Services, Inc.
Vibra Tech Engineers Incorporated
Ag-Chem Equipment Co., Inc.
Alamo Explosives Company, Inc.
Associated Industreis, Inc.
Applied Research & Development Co., Inc. (ARDCO)
Atlas Machine Products, Inc.
Austin Powder Company
Bech Rederierne
Beldon Corporation
Bolt Technology Corporation
Buckley Powder Co.
Butler Supply Co., Inc.
Cabeltel-Thomson-C.S.F.
Coker Aviation Insurance Agency
Commercial Credit Equipment Corp./McCullagh Leasing, Inc.
Continental Rubber B.V.
Drill Products International Inc.
Drilling Supply & Mfg., Inc.
E. I. du Pont De Nemours & Co.
Explosives Sales Corporation
George E. Failing Corporation
Frazer, Inc.

Geophysical Resources Inc.
Georex Industries
Geo Space Corporation
Griffin Tank & Welding Service
H & H Rentals Inc.
Harris Supply Co., Inc.
Harvey-Lynch, Inc.
Indel-Davis Inc.
Indel-Davis (Singapore) Pte. Ltd.
Industrial Vehicles International
Litton Resources Systems, Inc.
Lochta Services (Singapore) Pte. Ltd.
Mark Products, Inc.
Mertz, Inc.
Mitcham Associates, Inc.
Mitcham Exploration Services, Inc.
MOL N.V.
NL McCullough, NL Industries, Inc.
Northern Contract Service Inc. (NCS)
P. T. Deminex Indonesia
P. T. Pacific Geohydro
Pentagon Freight Services
Powder River Explosives, Inc.
Primacord Seismic Services, Inc.
R.B.C. Mining & Exploration Equipment Pty, Ltd.
C. A. Richards & Assoc., Inc.
Sealcraft Operators, Inc.
Seismic Systems, Inc.
Sensor Nederland B.V.
SERCEL Incorporated
SIE Division, Electronics Group, Geosource, Inc.
Terra-Cable
Tesco Engineering Company
Thermex Energy Corporation
Varel Manufacturing Company
Vector Cable Company
Wallem Offshore Marine Co., Ltd.
AGIP S.p.A.—Direzione Mineraria
American Overseas Petroleum Ltd.
American Petrofina Exploration Co.

Amoco Production Company
ARCO Oil and Gas Company
Bass Enterprises Production Company
The British Petroleum Co., Ltd.
Champlin Petroleum Company
Chevron Geosciences Company
Cities Service Company
Coastal Oil & Gas Corporation
Compagnie Francaise des Petroles (TOTAL)
Conoco, Inc.
The Dow Chemical Company
Esso Exploration Inc.
Exxon Company, U.S.A.
Gulf Oil Exploration and Production Co.
Ladd Petroleum Corporation
Mesa Petroleum Co.
Mobil Exploration & Producing Services, Inc. (M.E.P.S.I.)
Moore McCormack Energy, Inc.
Phillips Petroleum Company
P. T. Caltex Pacific Indonesia
Shell Oil Company
Societe Nationale Elf Aquitaine (Production)
Sohio Petroleum Company
Tenneco Oil Exploration and Production
Texaco, Inc.
Terra Resources, Inc.
Union Texas Petroleum Corporation

OF COUNSEL: /s/ MARK L. ROSS
Edward F. Kohnke, IV
LEMLE, KELLEHER, KOHLMEYER & MATTHEWS
Mark L. Ross
Pan American Life Center
601 Poydras - Suite 2100
New Orleans, Louisiana 70130
Telephone: (504) 586-1241

Attorneys for International Association of Geophysical Contractors

APPENDIX C

89th Congress) SENATE No. 168
1st Session)

EXEMPTION OF OCEANOGRAPHIC RESEARCH VESSELS FROM CERTAIN INSPECTION LAWS

April 28, 1965. Ordered to be printed

Mr. Magnuson, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 627]

The Committee on Commerce, to whom was referred the bill (S. 627) to exempt oceanographic research vessels from the application of certain vessel inspection laws, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

Purpose Of The Bill

The purpose of this proposed legislation is to encourage and facilitate oceanographic research and to remove several restrictions which have hampered the expansion of research in the marine sciences. This will be accomplished by exempting oceanographic research vessels from the application of certain vessel inspection laws.

General Statement and Background

S. 627 is identical to S. 2552, 88th Congress, as amended, which was reported favorably by the Committee on Commerce on July 31, 1964, passed the Senate on August 1, 1964, and was referred on August 3, 1964, to the House Committee on Merchant Marine and Fisheries.

The House committee not having acted on the bill at the close of the 88th Congress, reintroduction in the 89th Congress was requested by the Research Vessel Operators' Council and by the Committee on Oceanography of the National Academy of Sciences, National Research Council. This was done by the chairman of the committee and the resulting bill is S. 627.

The Research Vessel Operators' Council represents the following oceanographic institutions:

Chesapeake Bay Institute, Johns Hopkins University.
Duke University.
Florida State University.
Gulf Coast Research Laboratory.
University of Hawaii.
Hopkins Marine Station, Stanford University.
Lamont Geological Observatory, Columbia University.
University of Miami.
University of Michigan.
Oregon State University.
University of Rhode Island.
Scripps Institution of Oceanography, University of California, San Diego.
Texas A. & M. Research Foundation.
Virginia Institute of Marine Science.
University of Washington.
Woods Hole Oceanographic Institution.

All of these institutions operate vessels engaged in marine research or, in the case of the University of Michigan, scientific research in the Great Lakes. Twelve of the institutions operate vessels which have been available to them by the Department of the Navy under research contracts.

Dr. Jonathan Leiby, of the Woods Hole Oceanographic Institution, Woods Hole, Mass., is chairman of the council and Dr. John Dermody, senior oceanographer, University of Washington, Seattle, Wash., is secretary.

In addition to institutions represented by the council and other institutions operating vessels engaged [sic] oceanographic or limnological research, a number of industries have constructed and are operating vessels exclusively for research in the marine environment. S. 627 would apply equally to such vessels.

As both institutional and industry representatives have pointed out to the committee, oceanographic research vessels are presently operated under laws and regulations which impose difficulties in the operation of the ships and prevent, in some cases, full utilization of the vessels.

Scientific personnel must now be classified either as passengers or as members of the crew. If the latter, the agency reports indicate they are classified seamen or are subject to laws applicable to seamen although their duties differ from those performed by seamen. If the former, the vessel must be classified as a passenger vessel and thus becomes subject to inspection standards of unnecessary rigidity.

S. 627 provides that an oceanographic research vessel shall not be considered a passenger vessel and that scien-

tific personnel on such a vessel engaged exclusively in scientific research, or in instruction in oceanography and limnology shall not be considered seamen under the provisions of title 52 or 53 of the Revised Statutes and amendatory or supplementary acts.

Cost Of The Bill

There will be no additional cost to the Government as a result of enactment of S. 627.

* * *

Changes In Existing Law

Enactment of the bill would create an exemption, under certain circumstances, from provisions of existing law, but its enactment would not specifically amend any provision of existing law.

C-5

OCEANOGRAPHIC RESEARCH VESSELS EXEMPTION

HEARINGS
before the
SUBCOMMITTEE ON OCEANOGRAPHY
of the
COMMITTEE ON MERCHANT MARINE
AND FISHERIES

HOUSE OF REPRESENTATIVES

Eighty-Ninth Congress

First Session On
H.R. 3419 and H.R. 7320

Bills to Exempt Oceanographic Research Vessels From the Application of Certain Vessel Inspection Laws, and for Other Purposes

---

May 4, 5, 1965

Serial No. 89-8

Printed for the use of the
Committee on Merchant Marine and Fisheries

* * *

[p. 11]

STATEMENT OF COMDR. WILLIAM M. BENKERT, U.S. COAST GUARD, ASSISTANT CHIEF, MERCHANT VESSEL INSPECTION DIVISION

Commander BENKERT. I am Comdr. William M. Benkert, Assistant Chief of the Merchant Vessel Inspection Division, U.S. Coast Guard Headquarters. I am appreciative of the opportunity to be here and to speak to you in support of H.R. 3419.

During recent years, there has been a vast increase in the number of vessels engaging in oceanographic research activities performed in *the public interest*. In many cases, due to their size, their mode of propulsion, or their manner of personnel carriage, or a combination of these factors, these vessels have become subject to provisions of existing statutes requiring that they be inspected and certificated, and in fact placing them statutorily in the same category as passenger vessels or cargo vessels depending upon the number and type of personnel carried. The fact that these vessels have become subject to inspection and certification has, in turn, required that they comply with other statutes involving such fields as manning requirements. They must also comply with those portions of the Code of Federal Regulations appropriate to the category of vessel within which they fall, passenger or cargo.

Today, most seagoing oceanographic research vessels require inspection and certification because they are seagoing motor vessels of *over 300 gross tons and are thus subject to 46 U.S.C. 367*. As a practical matter, these

vessels have, of necessity, been limited numberwise insofar as the carriage of scientific personnel is concerned, in order that they might remain within the statutory category of "cargo or miscellaneous" vessels rather than become "passenger" vessels and thus be subject to even more rigorous requirements than those applicable under the regulations appropriate to cargo vessels. This personnel carriage limitation has, of course, been a hindrance to the vessel operators and has in certain cases resulted in the designating of scientific personnel as "crewmembers," alias "seamen," in order to avoid the passenger-number limitation while still permitting adequate scientific manning of the vessel to enable her to perform her

[p. 12]

desired research function properly. In addition, even the relatively less stringent cargo vessel regulations have, in many cases, presented compliance difficulties. Crew accommodation space requirements, electrical installation specifics, and other facets of these regulations, which were designed primarly for large oceangoing carriers, have proven to be burdensome and in reality have in many cases been inappropriate in view of the intended service of these vessels.

In conducting the statutorily required basic plan approval, inspection during construction, and continuing inspections for certification of these vessels, and in applying specific regulatory requirements, the Coast Guard has attempted to bend over backward to facilitate the operation of these vessels within the scope of our authority while maintaining appropriate safety standards for the vessels and their personnel. We have realized, of course,

that many of the applicable laws and regulations were onerous for the vessel operators, but our position in this matter has of necessity been one of law and regulation enforcement with such flexibility as has been within our authority.

In summation, we are appearing in strong support of this bill for the following specific reasons:

The clarification of the status of the scientific personnel aboard these vessels will, in our opinion, assist greatly in permitting the vessels to operate with a full scientific complement as desired by the oceanographic community, without their being artificially limited as to number of personnel carried by laws and regulations aimed at commercial passenger-carrying vessels. We believe that compliance by these vessels with the regulations applicable to cargo and miscellaneous vessels will provide a more than adequate margin of safety. *Further, the elimination of scientific personnel from seaman status will remove them from statute applicability involving obtainment of merchant mariners documents and other related requirements which were not initially contemplated for this type of personnel.*

We believe that section 4 of the bill would permit reasonable application of existing inspection, manning, and associated statutes and regulations in accordance with amplifying regulations which would be drafted by the Coast Guard under authority delegated to the Commandant by the Secretary of the Treasury. In this regard, should the bill become law, it is our intention to consult fully with all segments of the oceanographic community looking toward the promulgation of regulations which would be appropriate to these vessels, would not unduly

hinder the accomplishment of their designed purpose, and would still retain full safety for the vessels and their personnel.

Thank you very much.

This concludes my written statement.

Mr. CASEY. Thank you, Commander.

Are the inspection requirements and so forth only applicable to vessels over 300 tons?

Commander BENKERT. No sir, it is not, Mr. Chairman. There are a number of other categories of vessels which are subject to inspection but the vast majority of research vessels which have come under inspection and certification requirements have come under this particular statute. In the passenger field, for example, we have laws which require the inspection and certification of vessels under 65 feet in length which carry more than six passengers.

[p. 13]

We have a law which requires the inspection of passenger vessels over 65 feet in length that carry one or more passengers for hire.

We also have a law that requires the inspection of every steam vessel, this is specifically steam propulsion, of over 40 feet in length.

So that in effect, if any of the research vessels, due to their carriage of personnel falling within this passenger category, if they fit into this pattern then there is a possibility of their coming under the inspection and certification requirements based on these other laws.

Mr. CASEY. Will this bill cover all the statutory provisions that we *are trying to give them exemptions from or not in title 52 or title 53? Does that cover all these inspection laws or not?*

Commander BENKERT. Yes, sir.

Mr. CASEY. It does.

Commander BENKERT. Yes, sir.

Mr. CASEY. In other words, it covers those that you have just been relating.

Commander BENKERT. Yes, sir. Our feeling is that the passage of this law would *in effect not change any existing statutes but by permitting the Secretary of the Treasury—*

Mr. CASEY. It would permit a waiver.

Commander BENKERT. *It would in effect permit a waiver under section 4 of the bill.*

Mr. CASEY. *On any type of vessel of any size that would require certification now this bill would give the Secretary the opportunity to say, this is an oceanographic vessel, and they do not have to comply with this or this.*

Commander BENKERT. *Basically that, Mr. Chairman; yes, sir.*

Mr. CASEY. Are you running into problems in that regard now.? (Emphasis supplied)

* * *

[p. 14]

* * *

Mr. DOWNING. Yes.

Commander BENKERT. Well, any vessel that is subject to inspection and certification under certain presently existing laws would still be subject to inspection and certification under this bill. This bill would not change the applicability of existing law.

* * *

[p. 15]

* * *

COMMANDER BENKERT. We have no amendments to suggest; no, sir.

MR. ROGERS. Thank you, MR. CHAIRMAN.

COMMANDER, as I understand it then, all we are doing now is taking the oceanographic vessels and saying they will not be classified as passenger vessels as far as inspection goes, but they still fall under the classification of your cargo and miscellaneous vessels for the regulations you have there.

COMMANDER BENKERT. Yes, sir, they are seagoing mo.or vessels of over 300 gross tons or if they are a steam vessel.

* * *

[p. 17]

MR. REINECKE. I have one final question. You addressed most of your remarks to the fact that most of

these ships are over 300 tons. Is there any conflict with ships that are less than 300 tons?

COMMANDER BENKERT. Well, there are a number of vessels, sir, that are under 300 gross tons which are motor vessels, which are not by definition carrying passengers for hire, which are engaged in the oceanographic research business. We do not inspect these vessels, sir, because existing statutes don't place them under inspection and certification requirements. There are a number of these vessels—as a matter of fact, by far, at the present time, the greater majority of research vessels to my knowledge falls within this category you have mentioned. They are not subject to inspection and certification by law. In some cases we have given courtesy inspection service to this class of vessel that you have mentioned, trying to facilitate a safe operation even though not required by law.

* * *

[p. 18]

MR. DREWRY. Now, in the definition of the term "oceanographic research vessel" it states that that means a vessel which the Secretary of the Department in which the Coast Guard is operating finds is operated in the public interest by being employed exclusively in scientific research or instruction in oceanography or limnology, or both.

There is a great deal of oceanography being done in the United States today which is of a commercial nature such as the geophysical exploration work that is done in the Gulf of Mexico and all around the world, as a matter of fact.

COMMANDER BENKERT. Yes, sir.

MR. DREWRY. Do you feel that the definition here is sufficient to include them?

COMMANDER BENKERT. We would not include them under this definition; no, sir.

MR. DREWRY. Why not?

[p. 19]

Commander BENKERT. *We do not feel that this type of operation would be in the public interest, sir.*

Mr. DREWRY. Can you elaborate on what you envisage by the term "public interest"?

Commander BENKERT. *I think that our feeling on this point, sir, is simply something which is not done initially for a commercial benefit to an individual or a company or a corporation; in other words, this particular type of oceanographic research being engaged in is for the benefit of the country as a whole rather than for a commercial enterprise. We definitely do not feel, for example, that a commercial oil drilling-type operation or seismographic type of operation, which is being operated by a private corporation for their own utilization, their own determination of locating oil—we do not consider these as being oceanographic research vessels engaged in a public interest operation sir.*

Mr. DREWRY. How do you distinguish the work that is being done with a vessel operated by one of the institutions doing seismic work when it is exactly the same type of work that is being done by a geophysical vessel? How does one differ from the other?

Commander BENKERT. Our feeling is, sir, that again, by definition, one is a straight commercial type of operation and in terms of the vessel utilization itself is a commercial operation. *We feel that the work being done by the universities, by the various laboratories working under Government agency contracts and so forth, is a bona fide public interest operation and that in actuality many of the vessels are really quasi-public vessels in themselves.*

Mr. DREWRY. The basic purpose of your inspection and certification requirements, particularly inspection, are for such things as safety.

Commander BENKERT. Yes, sir.

Mr. DREWRY. Why should public interest vessels be less safe than commercial ones?

Commander BENKERT. We really don't feel that the vessel would be less safe, sir, through the medium of some dispensations from our regulations. We don't feel that we should be—let me put it this way: If a commercial organization which is engaging in research work of the type you have described, sir, were to come to us with a brand-new design for a vessel which required some variations, for example, from our presently existing regulations—we have already in some cases authorized this type of operation, even though not entirely within the scope of our regulations—we don't feel that we should be in a position where we are more or less obligated to grant all kinds of dispensation to any type of commercial operation which might conceivably be considered oceanographic research, sir. (Emphasis added)

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ALEXANDER L. STEVAS,
CLERK

NO. 83-424

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES R. PRESLEY,
Petitioner,

v.

GEOPHYSICAL SERVICE, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EUGENE J. SILVA
2600 First City Tower
Houston, Texas 77002
(713) 651-2014
Attorney for Respondent, Geophysical Service, Inc.

Of Counsel:
VINSON & ELKINS
ROBERT J. CUNNINGHAM
2600 First City Tower
Houston, Texas 77002
(713) 651-2188

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

QUESTIONS PRESENTED

Respondent believes that this case was properly decided by the Court of Appeals. However, for purposes of opposing any further review of issues addressed in Petitioner's brief, Respondent adopts Petitioner's Questions Presented.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit has now been reported in 709 F.2d 406 (5th Cir. 1983). Since the reported opinion follows verbatim the Unofficial Opinion printed in Petitioner's Appendix A at pp. A-1 to A-6, Respondent will not include herein a copy of the Official Opinion.

STATEMENT OF JURISDICTION

This case is susceptible to the jurisdiction of this Court, if at all, only under 28 U.S.C. § 1254(1), as indicated in the Petition for Writ of Certiorari.

STATUTES INVOLVED

Respondent adopts the statutes listed by Petitioner, and additionally cites the following relevant statute: 46 U.S.C.A § 446-446(c) [Sailing School Vessels Act of 1982].

> § 446. Sailing school students and sailing school instructors without seamen status under steam-vessel and merchant seamen provisions or maritime law doctrines.
>
> Sailing school students and sailing school instructors shall not be considered to be seamen under the provisions of titles 52 and 53 of the Revised Statutes of the United States and any Act amendatory thereof or supplementary thereto, or for the purposes of the maritime law doctrines of maintenance and cure or warranty of seaworthiness. (Pub. L. 97-322, Title II, § 204, Oct. 15, 1982, 96 Stat. 1589.)
>
> § 446a. Financial responsibility; minimum amount; evidence
>
> Each owner or charterer of a sailing school vessel shall maintain evidence of his or her financial responsibility to meet any liability incurred for death or injury to sailing school students or sailing school instructors on voyages aboard the vessel, in an amount not less than $50,000 for each student or instructor. Such financial responsibility may be evidenced by policies of insurance or other adequate financial resources. (Pub. L. 97-322, Title II, § 205, Oct. 15, 1982, 96 Stat. 1589.)

§ 446b. Sailing school vessel without status of merchant vessel or vessel engaged in trade or commerce under sections 291 and 883 of this title.

For the purposes of section 291 and section 883 of this title, a sailing school vessel shall not be deemed to be a merchant vessel or a vessel engaged in trade or commerce. (Pub. L. 97-322, Title II, § 206, Oct. 15, 1982, 96 Stat. 1590.)

§ 446c. Definitions.

For purposes of sections 672(b)(4), 446, 446a, 446b, and 446d of this title, the term "sailing school students", "sailing school instructor", and "sailing school vessel" have the meaning given such terms in section 390 of this title. (Pub. L. 97-322, Title II, § 207, Oct. 15, 1982, 96 Stat. 1590.)

STATEMENT OF THE CASE

Respondent substantially agrees with the Statement of the Case as presented in the Petition, except to note that Petitioner, although originally hired as a compressor mechanic trainee, had been promoted to compressor mechanic prior to incurring the alleged injuries upon which his suit was based. At all times, from and after his employment by Respondent, he was part of the geophysical "shooting group" on board, the M/V CARRIBEAN SEAL under the direct supervision of the Party Manager.

Respondent also objects to Petitioner's conclusory statement that the CARRIBEAN SEAL was not properly found to be an oceanographic research vessel under the ORVA. The CARRIBEAN SEAL was built specifically for oceanographic research, its entire career was devoted to that research, and it was conducting oceanographic research at the time Petitioner's accident occurred. On

the basis of such evidence presented to District Judge Gibson, both that Court and the Fifth Circuit treated the CARRIBEAN SEAL as an oceanographic research vessel under the ORVA for purposes of decisions rendered in this case.

Finally, Respondent is compelled to correct Petitioner's assertion that the effect of the Fifth Circuit decision below is to "totally [withdraw] seaman's status from 'scientific personnel' on board any vessel engaged in Oceanographic Research." (Petition, p. 6.) As Petitioner well knows, the Appellate decision prevents scientific personnel governed by the ORVA from being considered seamen under the provisions of the Jones Act, 46 U.S.C. § 688, but explicitly retains seaman's status and appropriate remedies for such persons under the general maritime law.

SUMMARY OF ARGUMENTS

It should be noted, and Respondent emphasizes, that the questions presented in this Appeal are not the subject of any conflict between the Circuits. Indeed, aside from this lawsuit, only one case has been published which addresses the issues raised in this Petition. That case, *Sennett v. Shell Oil Co.*, 325 F.Supp. 1 (E.D. La. 1971), was decided by District Judge Alvin B. Rubin, prior to his elevation to the Fifth Circuit Court of Appeals. His reasoning and holding in *Sennett* were specifically approved by the Fifth Circuit in the instant suit.

Additionally, Respondent does not believe that this case merits review on Writ of Certiorari. The questions presented are not of sufficient public importance to warrant being settled by this Court. The Oceanographic Research

Vessel Act ("ORVA") was intended to, and does in fact, affect only a small category of maritime workers aboard special purpose vessels. Proof of its relatively minor impact lies in the fact that, as indicated above, only one published opinion, other than the instant decision, has addressed these issues in the nearly 20 years since the enactment of the ORVA. It is not the general policy of this Court to issue a Writ of Certiorari where there is such a paucity of prior court decisions. This is particularly true where, as here, only one Circuit Court has addressed the issues on appeal.

Even if the Petitioner's Questions Presented were of some public importance, Respondent does not believe that these matters should be addressed by the Supreme Court at this time. They have not been developed at the district court or appellate levels outside the Fifth Circuit. Congress has not had an opportunity to respond legislatively, since this is the first appellate decision of record on the issue of Jones Act coverage under the ORVA. In short, the questions presented should be allowed to "percolate" in other forums to determine if they need settlement by this Court.

Respondent also submits that the decision of the Fifth Circuit interpreted terms of the ORVA which were clear and unambiguous. Having properly decided the issues of the case, there is no need for the *Presley* decision to be reviewed by this Court.

Finally, Respondent respectfully refers this Court to Petitioner's Statement of the Case, wherein it is accurately stated that the instant suit was accepted and docketed by the Fifth Circuit upon an interlocutory appeal. As this Court has stated in *American Construction Co. v. Jacksonville, T. & K.W.R. Co.*, 148 U.S. 372 (1893),

a Writ of Certiorari is not generally granted to settle interlocutory matters. Rather, where the Court of Appeals has remanded a case for further proceedings in a lower court, the usual policy is to await full resolution of the suit before considering the merits of an appeal. *See also,* R. Stern & E. Gressman, *Supreme Court Practice* § 4.19 (5th ed. 1978).

REASONS FOR DENYING WRIT

I. There Exists No Conflict Between the Various Circuits of the United States Courts of Appeal.

As Petitioner recognizes in his own brief, this Fifth Circuit decision is the first appellate judgment to construe the ORVA. The only other published case considering the issue of Jones Act coverage under the ORVA, *Sennett v. Shell Oil Co., supra,* arose from a 1971 District Court opinion, also within the Fifth Circuit. Hence, the questions presented in this Petition are apparently of significance only to a single Circuit, which now has spoken definitively on the matter. Unless and until those issues achieve more widespread significance among the Circuit Courts of the United States, Respondent respectfully suggests that this Court should refrain from granting certiorari.

II. The Questions Presented In The Instant Petition Do Not Constitute An Important Issue of Law For The Purposes of United States Supreme Court Rule 17.1(c).

The Congressional purpose of the ORVA was to recognize, as a matter of law, that oceanographic research ves-

sels and the personnel working aboard them while engaged in specialized scientific work in the marine sciences, must be treated differently than other commercial vessels and their personnel. *See* Purpose of the Bill, H.R. Rep. No. 599, 89 Cong. 1st Sess., *reprinted in* [1965] U.S. Code Cong. & Ad. News 2382, 2384. Hence, the statute affects only a very limited group of vessels and a specialized type of worker. Those persons exempted from Jones Act coverage under the Fifth Circuit's decision are restricted to members of scientific personnel aboard oceanographic research vessels. The largest group of persons so affected are the technical and mechanical groups aboard seismic vessels. Operating crews (i.e., Captain, Mate, engineers, deck seamen, stewards, etc.) are not exempted and retain all of their rights, including Jones Act status.

Hence, the ORVA was intended to, and does in fact, affect only a very small, highly specialized, category of persons working aboard a limited, special purpose type of vessel. As such, the details of its statutory construction do not involve legal issues of any great public importance.

Moreover, this decision does not affect scientific personnel under the ORVA as drastically as Petitioner would have this Court believe. The Fifth Circuit specifically left seaman's general maritime law remedies intact for scientific personnel. Other maritime remedies not restricted to seamen, (e.g., the Death on the High Seas Act, 46 U.S.C. § 713), continue to be available for scientific personnel or their survivors. The sole effect of the *Presley* decision is to exempt members of scientific personnel from seaman status under the Jones Act.

As noted, prior to the instant decision the only published case addressing the question of Jones Act coverage

under the ORVA was *Sennett v. Shell Oil Co., supra.* That case was decided six (6) years after the enactment of the ORVA. Since *Sennett,* it has taken some twelve (12) more years before the issue was raised again in a published case, by the Fifth Circuit in the instant litigation. This relative absence of activity and precedent underscores the fact that the issues presented by Petitioner have not been of any great public importance over the eighteen (18) year history of the ORVA.

III. The Issues of Law Presented by Petitioner Should Not Be Settled by This Court.

Despite the foregoing argument, should this Court find that the issues presented by Petitioner have sufficient public importance to warrant its attention, Respondent nonetheless respectfully maintains that they should not be addressed at this time. It has been the usual practice of the Supreme Court to allow time for the development of case law at the district and appellate levels, especially in circumstances where only two (2) published opinions have been rendered on a given issue. This is particularly true where the published cases are restricted to a single Circuit.

Respondent respectfully submits, therefore, that it would be premature for this Court to accept certiorari on these matters. Because of its unique status in American Constitutional law, suits filed under the Admiralty and Maritime jurisdiction of federal or state courts have traditionally yielded a number of genuine conflicts which were ultimately resolved by the granting of certiorari. That is not the case here.

Respondent also respectfully maintains that matters of legislative intent and statutory construction are often best settled by the legislative body which originally enacted the statute. If Congress is dissatisfied with the interpretation given to the ORVA by courts within the Fifth Circuit, it is initially the responsibility of Congress to clarify the Act accordingly.

IV. The Fifth Circuit Correctly Construed the ORVA.

A. The M/V CARRIBEAN SEAL was properly determined to be an oceanographic research vessel for the purposes of the ORVA.

Petitioner raises as a threshold issue whether the CARRIBEAN SEAL was properly classified as an oceanographic research vessel for the purposes of the ORVA, in accordance with 46 U.S.C.A. § 441(1). Petitioner has consistently raised this question in his briefs at the District Court and Appellate level, only to abandon his position during oral argument.

As Petitioner is well aware, at the time of Mr. Presley's injury there existed no method by which formal inspection and certification of an oceanographic research vessel could be obtained through the Coast Guard in order to comply with the ORVA. Not until December 16, 1981, some sixteen (16) years after the passage of the ORVA, did the Coast Guard promulgate regulations by which such certification could be obtained. *See* 46 F. Reg. 56200 (1981) (to be codified at 46 C.F.R. parts 3, 14, 24, 188 and 189).

Thus, at the time of the incident upon which this suit is based, and up until approximately two (2) years ago,

it was literally impossible for a vessel to be formally inspected and certified as an oceanographic research vessel, there being no procedures available by which the Coast Guard could make such a designation. If Petitioner's position were to be given credence by this Court, it would effectively defeat the entire purpose of the ORVA for the sixteen (16) years prior to the issuance of these regulations, and would allow the Coast Guard's bureaucratic delay to nullify a valid Congressional statute.

Prior to the issuance of these regulations, vessel owners and the courts employed a functional analysis test to determine vessel status for the purposes of the ORVA, based upon its actual and exclusive engagement in oceanographic research. The Petitioner has not, and cannot, cite a single case, published or unpublished, in which formal Coast Guard certification was required prior to the promulgation of these regulations. A requirement of that sort would have been absurd, of course, due to the impossibility of performance.

The functional definition of ORVA status was sanctioned by the Coast Guard at 46 C.F.R. 188 (entitled Subchapter U-Oceanographic Vessels). Such vessels are defined with reference to whether they are *actually engaged* in oceanographic research, and, if so, they are exempted from inspection as specified in 46 C.F.R. § 188.05-2. There has never been any question that the M/V CARRIBEAN SEAL satisfied the functional test by being *"employed* exclusively in . . . oceanographic research . . ." as defined at 46 C.F.R. 188.10-53, and thus it was exempted from inspection and certification when categorized as an oceanographic research vessel under Subchapter U.

It must also be noted that the ORVA does not require the Coast Guard to inspect, certify, or otherwise formally classify an oceanographic research vessel under the ORVA. Rather, the statute requires that the Coast Guard "find" a vessel to be an oceanographic research vessel. 46 U.S.C.A. § 441(1). Prior to issuance of the regulations governing inspection and certification, the Coast Guard "found" a vessel to be an oceanographic research vessel by means of a functional test, i.e. whether the vessel was actually engaged in oceanographic research. Upon such a "finding", the Coast Guard would then classify the vessel under Subchapter U and exempt it from inspection and certification. At the time of Petitioner's accident, the M/V CARRIBEAN SEAL was duly registered with the Coast Guard as an oceanographic research vessel.

B. The ORVA Does Not Vest the Coast Guard With Authority to Exempt Application of the Jones Act by Regulation.

Petitioner argues that § 445 of the ORVA grants the Coast Guard discretion to exempt oceanographic research vessels from the application of the Jones Act. However, it is clear that § 445 only grants the Coast Guard authority to exempt *vessels* from certain regulations. The Jones Act has nothing to do with the regulation of vessels. It affects employer/employee relationships exclusively, regardless of the identity of the vessel owner, the type of vessel, or the regulations applicable to them. *See e.g., Barrios v. Louisiana Construction Materials Co.*, 465 F.2d 1157 (5th Cir. 1972). Thus, Petitioner's ado concerning § 445 proves to be about nothing.

C. The Fifth Circuit Correctly Construed the Statutory Language of the ORVA.

This Court has long held that there is "no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *United States v. American Trading Ass'n, Inc.*, 310 U.S. 534, 543 (1940). In its most recent statement of this proposition, this Court has said that where the will of Congress "has been expressed in reasonably plain terms 'that language must ordinarily be regarded as conclusive.'" *Griffin v. Oceanic Contractors, Inc.*, ____U.S.____, 102 S.Ct. 3245, 3250 (1982) (quoting *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 [1980]). The "plain terms" of the ORVA, § 444, state that:

> Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of Title 53 of the Revised Statutes and Act amendatory thereof or supplementary thereto.

In reliance upon the above, the Fifth Circuit held that the Jones Act "amends" historic Title 53 of the Revised Statutes. Title 53 is currently codified in various sections throughout 46 U.S.C., Chapter 18, entitled "Merchant Seamen."[1] Both the Act of 1915 (c. 153, 38 Stat. 1164 [March 4, 1915]) in which the Jones Act was originally formulated, and the Merchant Marine Act of 1920 (c. 250, 41 Stat. 988 [June 5, 1920]) where it is found in

1. Title 53 of the Revised Statutes was comprised of sections 4501 to 4612 of the Revised Statutes and is now contained in sections 542a, 543, 545, 546, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 660, 661 to 669, 674 to 679, 682 to 685, 701 to 703, 705 to 707, 709, 710 and 711 to 713 of title 46.

its present form, include provisions which specifically amended provisions of the historic Title 53.[2]

The Fifth Circuit also found that the Jones Act is "supplementary" to Title 53 inasmuch as it pertains to the protection and relief provisions given merchant seamen. Its specific provisions, as well as its overall purpose, supplement the aims and intent of Title 53. A supplementary act is defined as one which supplies a deficiency, adds to, or completes, or extends a prior statute without impairing, changing, or modifying the existing provision. 1A C.D. Sands, Statutes and Statutory Construction, § 22.24 (4th ed. 1972). It is evident beyond argument that the Act of 1915 and/or the Merchant Marine Act of 1920 and/or the specific provision of the Jones Act itself, is supplementary to the provisions of Title 53 in purpose, function, and effect.

It is significant that Congress employed language virtually identical to the ORVA, when it recently enacted the Sailing School Vessels Act of 1982, 46 U.S.C.A. § 446 *et seq.* This legislation exempted sailing school students and sailing school instructors from seaman status under the Jones Act and general maritime law, as follows:

> Sailing school students and sailing school instructors shall not be considered to be seamen under the provisions of Title 52 and Title 53 of the Revised Statutes of the United States and any Act amendatory thereof

2. Despite its colloquial name the Jones Act is not itself an "act." Rather, it was originally passed merely as a provision (§ 20) of the Act of 1915, and amended by the Merchant Marine Act of 1920 at § 33. The ORVA specifies exemption from seaman status under "acts" amendatory to Title 53. Therefore, since both the Act of 1915 and the Merchant Marine Act of 1920 amend Title 53, the Jones Act itself must be considered amendatory as well.

> or supplementary thereto, or for the purposes of the maritime law doctrines of maintenance or cure or warranty of seaworthiness. 46 U.S.C.A. § 446.

As the Fifth Circuit properly noted in *Presley*, the addition of language in the Sailing School Vessels Act concerning general maritime law doctrines indicates that the absence of such language in the ORVA effectively retains general maritime law remedies for scientific personnel. Conversely, since Congress chose similar language to exclude sailing school students and instructors from seaman status under the Jones Act in the subsequent statute, this reaffirms its intent to exclude scientific personnel from Jones Act status in the prior statute.[3]

Examination of the legislative history of the Sailing School Vessels Act leaves no room for doubt that the statutory language was intended to remove "wide-ranging liability for injuries to seamen . . . historically . . . justified on the grounds that seamen are in need of special protection because they are at the mercy of the vessel's master . . ." H.R. Rep. No. 97-788, 97th Cong. 2d Sess., *reprinted in* 1982 U.S. Code Cong. and Adm. News 3138, 3142. A similar intent, then, must likewise be attributed to nearly identical language found in the ORVA.

Since the clear and unambiguous language of the ORVA requires exclusion of scientific personnel from

---

3. Although the sailing school statute exempts students and instructors from seaman status under Title 52 of the Revised Statutes as well as Title 53, this distinction is not relevant to the present inquiry concerning Jones Act coverage. Title 52 was concerned exclusively with the regulation of steam vessels, and not, as is the case with Title 53, with the protections afforded merchant seamen. As indicated in Respondent's argument above, the Jones Act requires a relationship of employer/employee and does not affect the regulation of vessels *qua* vessel.

seaman status under the Jones Act, and since this reading is supported by similar language in the subsequent Sailing School Vessel Act, it is the duty of the courts to enforce such an exclusion, and it is the responsibility of Congress to amend the statute if it believes that construction was not intended. As this Court has succinctly stated, "Congress may amend the statute; we may not."[4] *Griffin v. Oceanic Contractors, Inc., supra,* at 3253.

D. The Legislative History of the ORVA Supports the Fifth Circuit's Statutory Construction, or is Ambivalent on the Matter.

Respondent believes that the statutory language of the ORVA is clear and unambiguous, and therefore should be interpreted literally by the courts. In any event, resort to the legislative history of the ORVA is not particularly illuminating as to the specific intent of Congress in enacting the statute. The ORVA is not a statute which, as in the case of the Longshoremen and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, ("LHWCA"), includes in its legislative history an extensive discussion of its intent and purpose. Nor is the ORVA an act where advice from competing interest groups was sought, as

4. Petitioner does not even reference the Sailing School Vessels Act in his brief, which is perhaps understandable given its close similarity in form, purpose and intent to the ORVA. As noted by the lower court, it is undisputed this Act removes the persons covered thereunder from consideration as seamen, both for purposes of the Jones Act and General Maritime Law. As an incidental matter, the Sailing School Vessels Act's specific application only to non-profit institutions, as defined at 46 U.S.C.A. § 390, effectively refutes Petitioner's contention that Congress would not discriminate between public or private operators for the purpose of removing Jones Act coverage from one group and not the other, as would have been the effect of the ORVA as originally considered by the Congress. See Petition, p. 22.

was the case for passage of the LHWCA. Therefore, Petitioner's references to this Court's view of legislative history as expressed in *Director, etc. v. Perini North River Associates,* ____U.S.____, 103 S.Ct. 634 (1983) have little relevance to the interpretation of the ORVA.

At best, the legislative history of the ORVA is ambivalent. Despite Petitioner's contentions to the contrary, it is clear that Congress had in mind at least two distinct purposes in its passage. First, as Petitioner has already noted, the ORVA was intended to eliminate burdensome and inappropriate regulation which had been imposed upon vessels engaged in oceanographic research. But secondly, and of equal importance, the ORVA was intended to exempt from seaman status those personnel aboard such vessels, for whom such status was inappropriate. Virtually every report from each department and agency responding to the Congressional bill reflected this dual purpose.

Thus, to use the examples cited by Petitioner, the general counsel of the Department of Commerce, Robert E. Giles, stated:

> If [scientific personnel] are classified as seamen, they then become subject to the laws applicable to seamen. This presents problems because the regulations applicable to passenger vessels and to seamen are ill suited to the specific requirements of oceanographic research vessels. House Report p. 2385.

Assistant Secretary of the Navy Research & Development, Robert W. Morris, stated:

> On the other hand, if the scientific personnel on a research vessel are classified as members of the crew

> they become seamen and subject to the laws applicable to seamen. Such a classification also results in difficulties. The laws and regulations applicable to seamen are not designed to apply to scientists and technicians who perform duties considerably different from those usually performed by members of a ship's crew. . . .
>
> The bill would also make it clear that scientific personnel aboard an oceanographic research vessel are not to be classified as seamen and subject to the laws applicable to seamen. House Report p. 2387-88.

The Secretary of the Interior, Stuart Udall, explained that:

> . . . if scientific personnel are classed as crew members, they are viewed as seamen and made subject to the laws applicable to seamen. These laws are not designed to apply to scientists and technicians who perform duties considerably different from those usually performed by members of a ship's crew. House Report p. 2386.

The General Counsel of the Treasury, Fred Smith, wrote that:

> If . . . scientific personnel are classified as members of the crew, they then become subject to the laws applicable to seamen which are not appropriate to scientists and technicians who perform duties considerably different from those usually performed by the members of a ship's crew. House Report p. 2390.

Additionally, the Director of the National Science Foundation, Leland J. Hayworth said of scientific personnel that:

> . . . classification as seamen makes them subject to the laws applicable to seamen. Such laws, however, are

not geared to the duties of scientists aboard research vessels. House Report p. 2389.

Hence, it cannot be said, as Petitioner maintains, that the sole intent of Congress in formulating the ORVA was to exempt certain vessels from certain regulations. Congress very clearly also intended to pass a statute which affected the status of scientific personnel aboard such vessels. The legislative history of the Act is replete with such references.

Petitioner's reliance upon the testimony of Comdr. William M. Benkert of the U.S. Coast Guard is also misplaced.[5] Longstanding principles of statutory construction attribute little weight to the testimony of witnesses in committe hearings. This is particularly true where the issue raised for statutory interpretation is not specifically addressed. Indeed, in the context of the dual purpose of the ORVA, it is not surprising that Comdr. Benkert, as a representative of the Coast Guard (whose duties focus exclusively upon vessel regulation), concentrated his testimony on precisely those issues.

Correllatively, while the Coast Guard may well have certain legal responsibilities with regard to vessel regulation, and while the delegation of authority in such matters

5. Even a cursory review of the ORVA's legislative history would serve to place Commander Berkert's testimony in its proper context. Commander Benkert, a leading, effective and colorful spokesman for the Coast Guard before his retirement as Rear Admiral several years ago, is the last person one would expect Petitioner to cite on the grounds he ". . . fully supports Presley's interpretation of the ORVA . . ." (Petition, p. 21). He was, at the time, Assistant Chief of the Merchant Vessel Inspection Division. As such, his interest in the legislation was limited to *section 445* of the statute (id.), which dealt not with personnel or manning, as did *§ 444*, but, rather, with Coast Guard inspection of oceanographic vessels.

may warrant certain weight in the consideration of statutory construction, it cannot similarly be argued that the Coast Guard has any particular expertise in dealing with the issue of seaman's status and seaman's remedies for personal injury. The opinions of the Coast Guard upon such matters, therefore, should not be accorded particular influence over a court's own interpretation of the statutory language.

Finally, it must be recognized that Congress, not the courts, is the best arbiter of the intent of federal statutory language. If the Fifth Circuit has misconstrued the intent of the ORVA by focusing upon the specific terms of the Act, then it is up to Congress, in the first instance, to clarify its intent with appropriate action. Particularly in a case such as this, where the statute has been interpreted in only two published cases throughout its eighteen year history, and only now in an appellate decision, Congress should be afforded the opportunity to correct its own statutory language if it believes that those cases were wrongly decided.

This is emphatically *not* the sort of case, therefore, that should be reviewed at this time by the highest court in the land. Not until other courts have addressed the issues raised by the ORVA, and not until Congress has had an opportunity to reevaluate its own legislative intent, should this Court feel impelled to finally construe the terms of this Act.

Of course, Respondent believes that the silence of other courts and of Congress in the dozen years since *Sennett v. Shell Oil Co., supra,* speaks loudly for the proposition that this decision was correctly decided and that its interpretation of the ORVA accurately represents "legisla-

tive intent". By approving the reasoning and holding of *Sennett* the Fifth Circuit in the instant decision merely reiterates, at the appellate level, the construction of the ORVA which has been the sole standard for many years. Had Congress or other courts disagreed with that construction, they have had ample time to address the issue independently. There is no need at this date for the Supreme Court to settle an issue of statutory construction which had been secure for some years in the only Circuit yet to address the matter.

CONCLUSION

Petitioner seeks review of issues which have been the subject of published opinions only twice since passage of the Oceanographic Research Vessels Act nearly twenty years ago. Moreover, the questions presented for review are hardly of sufficient public importance to warrant the judicial time and effort involved on the part of this Court, as well as the expense which will be incurred by this Respondent. On these bases alone, the Writ should be denied.

Separate and apart from the foregoing, however, Respondent submits that the Fifth Circuit Court of Appeals has correctly construed the meaning and intent of the ORVA in reliance upon the very words ". . . by which the Legislature undertook to give expression to its wishes", cf. *United States v. American Trading Ass'n, Inc., supra.* Congress chose to remove scientific personnel onboard oceanographic research vessels from seaman status within the meaning of historic Title 53 and any of its amendments or supplements. It did so in specific, clear and unambiguous terms, just as it subsequently chose to re-

move sailing school students and sailing instructors from Jones Act status utilizing nearly identical language. This was plainly understood by the Fifth Circuit in deciding the *Presley* decision, as is evident from the opinion below. To hold otherwise would have amounted to an unwarranted change of existing law by judicial fiat. That is what Petitioner seeks to accomplish and that is precisely what this Court should avoid.

For the reasons set forth herein, Respondent respectfully urges this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

EUGENE J. SILVA
ROBERT J. CUNNINGHAM
2620 First City Tower
Houston, Texas 77002
(713) 651-2014

Attorneys for Respondent, Geophysical Service, Inc.

Of Counsel:

VINSON & ELKINS
2600 First City Tower
Houston, Texas 77002
(713) 651-2222

CERTIFICATE OF SERVICE

On this 5th day of December, 1983, three (3) true and correct copies of the above and foregoing instrument were forwarded via U.S. Certified Mail, Return Receipt Requested to:

Mr. Russell H. McMains
Edwards, McMains & Constant
935 Petroleum Tower
P. O. Drawer 480
Corpus Christi, Texas 78403

Mr. Mark L. Ross
Lemle, Kelleher, Kohlmeyer & Matthews
Pan American Life Center
601 Poydras Street, Suite 2100
New Orleans, Louisiana 70130

EUGENE J. SILVA

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CLERK

NO. 83-424

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES R. PRESLEY,
Petitioner,

v.

GEOPHYSICAL SERVICE, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S RESPONSE TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RUSSELL H. MCMAINS
Texas State Bar I.D.
No. 13782000
935 Petroleum Tower
P. O. Drawer 480
Corpus Christi, Texas 78403
512/883-0971
Attorney for Petitioner,
James R. Presley

Of Counsel:

EDWARDS, MCMAINS & CONSTANT
Corpus Christi, Texas

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

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To The Honorable United States Supreme Court:

NOW COMES Petitioner, James R. Presley, and files this his Response to the Opposition to Petition for Writ of Certiorari filed by Geophysical Service, Inc., Respondent, and for such Response would respectfully show unto the Court the following:

PETITIONER'S RESPONSE TO RESPONDENT'S CLAIMED REASONS FOR DENYING WRIT

I. The Absence of Conflict Between the Circuits

Petitioner acknowledged in his Petition for Writ of Certiorari that the Fifth Circuit Opinion below presented a case of first impression from a United States Circuit Court of Appeals. That fact alone, however, does not diminish the significance of the legal questions presented by the Petition or minimize the number of cases in which this issue has arisen and is currently arising in the Federal Courts.

Respondent has carefully worded its implicit claim that Petitioner's plight is isolated by arguing that the only other "published" case considering the Jones Act issue under the ORVA is another opinion out of a district court in the Fifth Circuit, *Sennett v. Shell Oil Co.*, 325 F.Supp. 1 (E.D. La. 1971). Respondent is, nonetheless, well aware of the existence of other *unpublished* opinions in similar cases, as well as other pending litigation which depend upon the interpretation of the ORVA that is squarely presented by Presley's Petition. In the District Court and in the Fifth Circuit, Respondent relied upon two such unpublished opinions which had summarily denied Jones Act claims based on *Sennett. Trowell v. Western Geophysical Co. of America,* Ca. No. 75-H-1779 (S.D. Tex., April 12, 1977) and *Castro v. Vessel LAFAYETTE,* Ca. No. 76-H-755 (S.D. Tex., March 2, 1978). On the eve of oral argument in the Fifth Circuit, Respondent produced another magistrate's decision denying Jones Act remedies to a worker on an Oceanographic Research Vessel from the Northern District of California.

In Re the M/V PEACOCK, Ca. No. C-80-2642-SAW (FSL) (May 4, 1983). Respondent is also well aware of the pendency of another Jones Act claim which has been filed against *it* in the San Diego Division of the California Federal District Court and arising out of the operation of the Carribean Seal and involving an injury on the same voyage on which Presley was injured.

Since the publication of Judge Gibson's District Court Opinion in the instant case, the undersigned counsel for Petitioner has received inquiries from lawyers in Waco, Texas, California, Michigan, Louisiana, and Corpus Christi, regarding Jones Act claims by members of the "scientific crew" who were injured aboard an alleged oceanographic research vessel.

II. The Importance of the Question of Law Presented

Certainly the denial of a Jones Act remedy to an injured seaman is not an insignificant or unimportant issue. Nor is the Jones Act status of Petitioner, Presley, as a scientific crew member aboard an oceanographic research vessel a numerically insignificant issue as perhaps best illustrated by the number of interested amici who appeared in the Fifth Circuit as operators of such vessels. The overall numerical significance of the questions presented may best be summarized in Senate Report No. 96-886 relative the Inspection and Manning Laws of Small Vessels, 1980 U.S.C.C.&A.N. p. 3294-95 wherein the Senate Committee observed:

> "The evolution and phenomenal growth during the past thirty years of the highly specialized offshore mineral and oil support industry has provided another

strong, clear example that highlights the deficiencies of the existing marine safety statutes in such circumstances.

This important segment of our merchant marine operates over 3,000 vessels and directly employs some 30,000 persons in support of offshore oil and energy exploration and production. The offshore marine service industry consists of a diversified group of firms that provide a wide range of exploration, construction, distribution-supply, and safety services to the offshore oil and mineral extractive industries, in the almost twenty areas of the world where oil is currently sought beneath the seabed. Vessel types include: supply, tug-supply, tug, crew, utility and standby, *seismic*, diving support vessels and barges. This industry has grown to its present size and diversity since its birth in 1947. Most of the industry is centered in the Gulf of Mexico but the industry operates worldwide." [Emphasis supplied]

III. The Propriety of Judicial Interpretation

Respondent's alleged third reason for opposing certiorari claims that the Congress, rather than this Court, should reconcile or decide the construction of the withdrawal of Jones Act coverage to James Presley and those similarly situated upon alleged oceanographic research vessels. This argument totally begs the question in that it assumes that the Congress intended the withdrawal of that coverage in the first instance. That assumption is precisely what has been challenged by Petitioner in the instant case. This Court is clearly the proper forum for the disposition of such issue.

Nor is the fact that the instant case arises from an interlocutory appeal initially taken by Respondent of any significance whatsoever with regards to the granting of

Certiorari in this case. The Fifth Circuit Opinion is a final disposition of the Jones Act Claims by Presley against Respondent as a Summary Judgment has been granted which cannot be otherwise determined by the District Court and will not be redetermined by the Fifth Circuit upon a subsequent appeal. This Court has not hesitated to grant certiorari to review matters on an interlocutory appeal which are of sufficient significance to otherwise warrant the granting of certiorari. *United Steel Workers v. R. H. Bouligny, Inc.*, 382 U.S. 145 (1965).

IV. The Irrelevance of the Sailing School Vessel's Act of 1982, 46 U.S.C.A. § 446-446(d) (1983 Supp.)

In its opposition, Respondent has chastised Petitioner for not alluding to the Sailing School Vessels Act in his Petition for Certiorari. On its face, that Act is clearly inapplicable to any issue presented in this case. Significantly the legislative history has been carefully edited by Respondent to exclude the consideration that was expressly given by the Congress in connection with sailing school students and instructors. The legislative history as partially included in the 1982 U.S.C.C.&A.N. at 3142 specifically acknowledges the Congressional intent to exempt sailing school instructors and sailing school students from the applicability of maritime law protection otherwise afforded seamen in the following terms:

> "The possibility that students or instructors aboard school vessels may be viewed by the courts as seamen entitled to recover damages for injuries under maritime legal doctrines also hampers school ship

> operations. Wide-ranging liability for injuries to seamen has historically been justified on the grounds that seamen are in need of special protection because they are at the mercy of the vessel's master, and *that the vessel operator who derives a profit from their employment should bear the costs of compensating them for their injuries. These justifications do not support the imposition of such broad liability on the operator of a sailing school ship, which operates to provide an educational opportunity for students."* [Emphasis supplied]

Indeed sailing school students are not "employees" in the first instance and the wording of the Sailing School Vessels Act, as well as the legislative history, differs *markedly* from the ORVA.

Not insignificantly the Respondent also omitted from its citation to the Sailing School Vessel's Act, § 446(d), which specifically postpones the operation of even that Act for 18 months, since the purpose of the Act, in part, was to encourage the development of private institutions supplying educational opportunities for sailing school development. Ultimately, it should be noted that negligence liability remains against the vessel operators as there are specific provisions in the Sailing School Vessels Act for the maintenance of liability insurance for coverage as to death or injury to such persons.

In contrast, the argument made by Respondent and adopted by the Fifth Circuit eliminates all negligence liability on the part of the employer. There is no supporting legislative history for such a far-reaching interpretation in the Oceanographic Research Vessels Act nor is there language in the ORVA to justify the holding of the Fifth Circuit or Respondent's argumentation.

It is perhaps intriguing that Respondent, GSI, makes the argument that the ORVA so obviously withdraws Jones Act remedies, since GSI itself never even made such a contention, but rather paid one of its employees under the Jones Act without ever making the claim of exemption from Jones Act coverage by virtue of the Oceanographic Research Vessels Act in *Viger v. Geophysical Services, Inc.*, 476 F.2d 1288 (5th Cir. 1973). Thus, nearly eight years after the passage of the ORVA, GSI was totally unaware of the claimed obvious intended exemption of Jones Act status for its scientific personnel on an Oceanographic Research Vessel.

The obvious conclusion to be drawn is that the Act does not on its face withdraw Jones Act coverage from James Presley, but such has been accomplished solely by a judicial interpretation which virtually ignores the legislative history of the ORVA. That interpretation should be rectified by this Court in accordance with Presley's Petition for Certiorari.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES, ARGUMENTS AND AUTHORITIES CONSIDERED, James R. Presley, Petitioner herein, respectfully prays that this Petition for Certiorari be granted and that upon hearing hereof that the Fifth Circuit Opinion and Judgment summarily denying Presley's Jones Act claim should be reversed and the cause ordered remanded to the District Court for trial, and that he be awarded his costs of appeal and such other

and further relief as the Court feels that he has shown himself justly entitled to under the circumstances.

Respectfully submitted,

By: _____

RUSSELL H. MCMAINS
Texas State Bar I.D.
No. 13782000
935 Petroleum Tower
P. O. Drawer 480
Corpus Christi, Texas 78403
512/883-0971

Attorney for Petitioner,
James R. Presley

Of Counsel:

EDWARDS, MCMAINS & CONSTANT
Corpus Christi, Texas

CERTIFICATE OF SERVICE

On this _____ day of December, 1983, a true and correct copy of the above and foregoing instrument was forwarded via U.S. Certified Mail, Return Receipt Requested, to:

Mr. Robert J. Cunningham
VINSON & ELKINS
First City Tower
Houston, Texas 77002

Mr. Mark L. Ross
LEMLE, KELLEHER, KOHLMEYER
& MATTHEWS
Pan American Life Center
601 Poydras Street, Suite 2100
New Orleans, Louisiana 70130

RUSSELL H. MCMAINS